

**In The Matter Of:**  
*United States vs.*  
*PFC Bradley E. Manning*

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*Vol. 33*  
*August 12, 2013*  
*UNOFFICIAL DRAFT - 8/12/13 Morning Session*

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Min-U-Script® with Word Index

**VOLUME XXXIII**

**IN THE UNITED STATES ARMY**

4 UNITED STATES

5 | VS.

6 MANNING, Bradley E., Pfc.

## COURT-MARTIAL

7 U.S. Army, xxx-xx-9504

## 8 Headquarters and Headquarters Company,

9 U.S. Army Garrison,

## 10 | Joint Base Myer-Henderson Hall,

11 | Fort Myer, VA 22211

12 \_\_\_\_\_ /

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16 that do not make sense, and missing testimony or  
17 colloquy due to being inaudible by the reporter.

1 APPEARANCES:

2 ON BEHALF OF GOVERNMENT:

3 MAJOR ASHDEN FEIN

4 CAPTAIN JOSEPH MORROW

5 CAPTAIN HUNTER WHYTE

6 CAPTAIN ALEXANDER VON ELTEN

7

8 ON BEHALF OF ACCUSED:

9 DAVID COOMBS

10 CAPTAIN JOSHUA TOOMAN

11 MAJOR THOMAS HURLEY

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2 August 12, 2013

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## PROCEEDINGS,

THE COURT: The Court is called to order.

3 Major Fein, please account for the parties.

4 MAJOR FEIN: All parties in the court at  
5 last recess are again present with the exception of  
6 Captain Overgaard is absent and Captain von Felten is  
7 present. This is an open session unclassified in  
8 nature and certain the court's hearing officer  
9 continues with open hearing checklist and they will be  
10 filed with post trial and like papers.

14 There is no media in the courtroom. 29 spectators  
15 in the courtroom and currently there are no  
16 spectators in the overflow trailers, although it  
17 remains available.

18 THE COURT: Thank you. Before we begin  
19 today the Court has been advised that a video has been  
20 made as part of the prosecution's closing argument on  
21 the merits -- of part of the prosecutions closing

1 argument on the merits.

2                   Once again I remind you that under  
3 RCN086C photography and broadcast of the court  
4 proceedings is prohibited. This includes  
5 photography, broadcasting, video, audio recording,  
6 the taking of photographs and radio and television  
7 broadcasts of the proceedings from the court  
8 martial. Video was made from the overflow trailer.  
9 The overflow trailer is an extension of the  
10 courtroom.

11                   So the same rules apply as the violation  
12 of the court's rules came from the over flow trailer  
13 additional security measures will be imposed for the  
14 overflow trailer only to ensure that the additional  
15 violations of the Court's rules do not occur.

16                   The overwhelming majority of the media  
17 and spectators in this case have behaved with the  
18 decorum befitting on the Court's rules. I thank  
19 you.

20                   Government what is the status of your  
21 case?

1                   MAJOR FEIN: Your Honor, on Friday the  
2 government rested its sentencing case.

3                   THE COURT: That was during the closing  
4 portion.

5                   MAJOR FEIN: It was, Your Honor.

6                   THE COURT: We have two motions that we  
7 have scheduled for oral argument this morning. The  
8 first is judicial notice, however, the Court received  
9 an e-mail over the weekend that the government did not  
10 object to the Defense motion for judicial notice of  
11 Appellate Exhibit 651.

12                  Is that correct, Major Fein?

13                  MAJOR FEIN: Yes ma'am. That e-mail is  
14 Exhibit 653.

15                  THE COURT: So there's no additional need  
16 for oral argument with that motion; is that correct?

17                  MR. TOOMAN: That's correct, Your Honor,  
18 and the Defense has changed out the attachments to that  
19 appellate exhibit so the comments aren't in there.

20                  THE COURT: Right now it's as an appellate  
21 exhibit. You want me to consider it as a defense

1 exhibit?

2 MR. TOOMAN: Yes, ma'am.

3 THE COURT: You want to remark it either as  
4 a defense exhibit? That's probably the easiest way to  
5 save trees or make an additional copy?

6 MR. TOOMAN: I have an additional copy.  
7 I'll just give it to the court reporter.

8 THE COURT: This will be Defense Exhibit  
9 India India India and Defense Exhibit Juliette Juliette  
10 Juliette, and the court takes judicial notice of both  
11 of these.

12 MR. TOOMAN: Your Honor, based upon  
13 that the Defense would no longer call Colonel Larry.

14 THE COURT: We will have Colonel Larry then  
15 removed from the Defense witness list, and just for the  
16 record the articles are entitled exclusive Taliban  
17 makes IEDs deadlier. It is dated September 15, 2009,  
18 Washington Times, and National Defense Pentagon still  
19 catch up with bomb makers dated July 2011.

20 Major Fein, can you please account for  
21 the remainder of the appellate exhibits.

1                   MAJOR FEIN: Appellate Exhibit 652 is  
2 the Defense's response to appellate Exhibit 645, the  
3 government's motion for relief concerning records  
4 dated 10 August 2013.

5                   Your Honor, Appellate Exhibit 654 Alpha  
6 and Bravo is the government's response to the  
7 Defense's objection under RCM1001B4, records  
8 referencing the testimony of Major General McKinzie  
9 and Rear Admiral Donogan. Similar to the previous  
10 filings the Government incorporated the Defense's  
11 objections into his filing. Alpha's the classified  
12 version. Bravo's the unclassified redacted version.

13                  THE COURT: Thank you. For the record,  
14 counsel and I met very briefly this morning for an  
15 RCM802 conference. That's a conference where I talk  
16 with counsel about scheduling issues and other logistic  
17 issues that may arise in the case and basically what we  
18 just went through is what we discussed during the  
19 RCM802 conference.

20                  Next on the agenda is the argument over  
21 the government's motion to receive the long form of

1 the RCM706 board.

2                   There were four things that the  
3 government wanted. Major Fein, are all four of  
4 those issues still ripe?

5                   MAJOR FEIN: Some of them still are.  
6 First, Your Honor, the United States requests the  
7 specifics disclosures and material (INAUDIBLE) to rely  
8 upon.

9                   THE COURT: What don't you have.

10                  MAJOR FEIN: Going off the list of page 3  
11 of the government's motion Appellate Exhibit 645 we  
12 received from the defense echo records from site  
13 testing during the time of joint regional facility.  
14 We've not had a chance to verify that were Commander  
15 Multon whether that complete or not. Records and notes  
16 from any mitigation expert interviewed, similarly we  
17 have received that from the defense, but we have not  
18 had an opportunity to confirm with Commander Multon  
19 whether that is everything he in that category gore.

20                  THE COURT: Before we get to that. A  
21 through I have you not have received from the defense?

1                   MAJOR FEIN: Ma'am, we don't have any notes  
2 from Commander Multon motel.

3                   THE COURT: Mr. Coombs, what's the status  
4 of the notes?

5                   MR. COOMBS: I don't know. I haven't  
6 received the notes either. I talked to Commander  
7 Multon and he indicated that whatever notes that he was  
8 using to form the basis of his opinion he needs to  
9 provide to the government. So the defense will do  
10 that.

11                  THE COURT: Is he bringing his entire file?

12                  MR. COOMBS: I believe so, Your Honor.

13                  MAJOR FEIN: We've asked him to bring  
14 everything possible.

15                  THE COURT: When is he coming?

16                  MAJOR FEIN: Tomorrow night, ma'am.

17                  THE COURT: He is he supposed to be  
18 testifying on Wednesday?

19                  MAJOR FEIN: Yes, ma'am, and we intend this  
20 afternoon to call him again to say can you send  
21 whatever as missing from this list ahead of time so

1 there's no delay.

2 THE COURT: All right. Once again, I left  
3 Thursday and Friday open for a reason. So we'll do  
4 what we can to make this work and make sure everyone  
5 has the appropriate documentation.

6 So we have some issues, but they aren't  
7 at this point ripe for the Court's consideration?

8 MAJOR FEIN: That's correct, ma'am.

9 THE COURT: What about the long form? Is  
10 what's at issue today?

11 MAJOR FEIN: Yes, ma'am, it is. Also,  
12 ma'am, finally in defense sends an e-mail. Which just  
13 wanted to confirm that there's no 914 issues included  
14 in e-mails also because the defense has contested  
15 whether they consider any information in e-mails even  
16 part of RCN914, and the last e-mail didn't specifically  
17 state that.

18 THE COURT: Mr. Coombs, without arguing  
19 that e-mails fall within the Jakes material under  
20 RCM914. Have you had a chance to review your records  
21 and your e-mails between the defense team and Dr.

1 Multon?

2 MR. COOMBS: Yes, I have.

3 THE COURT: Do any of them qualify as  
4 statements under 914?

5 MR. COOMBS: No, Your Honor.

6 THE COURT: All right.

7 MAJOR FEIN: It's just that sentence.

8 THE COURT: Are you ready to argue?

9 MAJOR FEIN: Yes, ma'am. Permission to  
10 brief from the desk.

11 THE COURT: That's fine.

12 MAJOR FEIN: Ultimately the United States  
13 contends that the defense puts Private First Class  
14 Manning's mental condition at issue under MRE302. The  
15 rule specifically states that in the defense alleges a  
16 mental condition. It doesn't say necessary for an  
17 insanity defense on the merits. Specifically MRC302  
18 the new one says, any derivative evidence obtained  
19 through or use of such a statement from being received  
20 into evidence that gives the accused an issue of guilt  
21 (INAUDIBLE) or during sentencing proceedings.

1                   It is clear, Your Honor, the defense  
2 intends to use alleged mental condition of PFC  
3 Manning in their sentencing and United States  
4 requests under Clark and RA302 that the long form  
5 report less PFC Manning's statements that might be  
6 captured in the report be disclosed to the  
7 prosecution so the prosecution can properly prepare  
8 its case to cross examine Commander Multon and  
9 potentially a rebuttal case.

10                  THE COURT: Is there any case law that the  
11 government is aware of that deals with, in any shape or  
12 form, the release of the long Form 7064 where evidence  
13 of mental health has been raised during sentencing,  
14 extenuation of mitigation?

15                  Ma'am, the United States didn't find  
16 necessarily a specific case where mental health was  
17 only raised for sentencing and only sentencing, but  
18 it's clear from multiple cases including Clark  
19 itself that appellate courts have stated that if  
20 issue is whether the defense raises a mental  
21 condition existing of the accused at any point in

1 the trial.

2 So although there's not a case directly  
3 to my point for sentencing alone, the defense has  
4 alleged through the exact proffer for Commander  
5 Multon that they intend to elicit evidence based off  
6 of PFC Manning's mental condition?

7 THE COURT: The proffer that you have in  
8 your motion, where that come from?

9 MAJOR FEIN: That came from the defense's  
10 witness list, Appellate Exhibit 344. It's verbatim.  
11 Defense used terms such as regressed stages of  
12 development, narcissistic personality traits and  
13 they're using behavioral (INAUDIBLE) specific terms  
14 putting PFC Manning's mental condition at issue.

15 The Government's contending that the  
16 rule under government MRA302 Clark and 513 allow for  
17 the government to be able to say we don't have  
18 access to the accused, that we have any  
19 documentation referencing his mental health. Less  
20 the statements, because those are specifically  
21 protected when it comes to the long form of the 706

1 available.

2                   So the government's forensic  
3 psychiatrist expert if we so chose to use he or she  
4 will be able to access that and the government will  
5 all be put on rebuttal.

6                   THE COURT: MRE513 would apply to  
7 statements made to Dr. Multon, but that wouldn't have  
8 anything to do with the 7064, would it?

9                   MAJOR FEIN: No, ma'am, other than 302  
10 cross references it, ma'am, but, no, 706 we feel --

11                  THE COURT: MRE302 would be the guiding  
12 rule?

13                  MR. COOMBS: Yes, ma'am. And Clark that is  
14 the most recent case.

15                  THE COURT: And Clark is not talking  
16 about the sentencing, they're talking about the  
17 merits. What's the language that you are relying on  
18 again?

19                  MR. COOMBS: Yes, ma'am. And the  
20 language of the United States is relying on -- the  
21 actual citation is I guess it's page 200 or a

1 quarter. MRE302 is specifically drafted to allow  
2 the defense control and unaccused statements that  
3 (INAUDIBLE) will be released to prosecutor and  
4 presented to court martial.

5           If the defense does not allege and  
6 (INAUDIBLE) at a court martial or does so only  
7 through the lay testimony the Sandy board will not  
8 be provided to the prosecution, but if the defense  
9 offers expert testimony that the mental condition of  
10 the excused in quote citing 302, the military judge  
11 shall uphold the defense to release to the  
12 prosecution the full contents and other statements  
13 made by the accused of Sandy bar later on, Your  
14 Honor, Clark court holds once the defense offers  
15 expert testimony concerning accused mental condition  
16 through to Charlie allows the military judge to  
17 provide the government with Sandy (INAUDIBLE)to  
18 redacting the huge statements.

19           And that's exactly what happened here,  
20 Your Honor. The defense in Clark put the mental  
21 condition of the accused at issue, but not using any

1       doctors from the 706 and purposely did not show the  
2       706 report to their mental health provider.

3                   So the Court, the appellate court in  
4       Clark held, that the statements themselves within  
5       the long form report should not be disclosed to the  
6       government, but the government does get access to  
7       the long form report. Seems directly on point in  
8       this case.

9                   THE COURT: What does the government's  
10      position with respect to the defense's contention that  
11      this only applies on the merits because this is a  
12      merits case too.

13                  MAJOR FEIN: Ma'am, there's no case law  
14      that supports that proposition. The rule 302, as I  
15      stated a moment ago, is pretty clear, just at the  
16      beginning MRE302 the general rule, it doesn't delineate  
17      between a merits insanity defense or not.

18                  The defense is relying on the analysis  
19      to interpret that and that shows a history of 302.  
20      The rule itself on it's face does distinguish the  
21      difference between an issue of guilt which would be

1       insanity or sentencing proceedings.

2                   302 itself is very clear. Either one of  
3       those with an or separating them.

4                   THE COURT: Does the government believe  
5       MRE302 is a privileged concerning mental examination of  
6       the accused? Is this a privilege for the long form and  
7       the statements or just the statements.

8                   MAJOR FEIN: I'm sorry, could you repeat  
9       that?

10                  THE COURT: Is that privilege to prevent  
11       release of the long form the RCM706 board or just the  
12       statements or both?

13                  MAJOR FEIN: Those are under privilege of  
14       statements because it's a privilege and it allows the  
15       accused to get mental health and be able to feel free  
16       is to give that support which should be protected but  
17       ultimately 706 read with 302 does incorporate an actual  
18       report itself and distinguishes again the short and  
19       long form. But the key here, Your Honor, is the  
20       defense is the gatekeeper and if the defense raises a  
21       mental health condition they open the door and it's

1       their decision whether to do that or not and that's  
2       where 302B1, the exception says, there is no privilege  
3       when the accused person introduces into evidence. It  
4       doesn't on the merits. It doesn't say on sentences.  
5       It says on evident. It doesn't distinguish.

6                   THE COURT: Thank you.

7                   MAJOR FEIN: Yes, ma'am.

8                   THE COURT: Defense?

9                   MR. COOMBS: Your Honor, first I think it's  
10       helpful to look at the overall purpose of the MRE302  
11       and 706 especially when you're considering them  
12       together. 302 is designed to essentially put the  
13       government on the equal footing with the defense when  
14       the defense offers any sort of defense that would go  
15       towards a mens rea element in the merits that's how the  
16       defense looks at 302 --

17                   THE COURT: Why doesn't the rule say that?

18                   MR. COOMBS: When you look at the  
19       discussion, it's just the drafters within the rule  
20       didn't spell that out, but when you look at the  
21       discussion it's clear that that's what the rule was

1       designed to do.

2               It was designed to battle competing  
3       interests between an accused being able to put up a  
4       defense, an insanity defense, that went towards a  
5       mens rea element. It wouldn't have to be insanity.  
6       It could be anything that attacks the mens rea on  
7       the elements.

8               Once the defense does that, then the  
9       government should be entitled to a long form report  
10      at the very least and potentially the ones with the  
11      statements as well in order to be put on equal  
12      footing.

13               THE COURT: Why wouldn't that same  
14      proposition apply in sentencing?

15               MR. COOMBS: It would. Two things. If the  
16      expert for the defense was considering the 706 report  
17      in sentencing and that was the primary basis for his or  
18      her opinion, then there would be an argument for that.

19               Although still even in that instance the  
20      rule seems to be more interested in the merits  
21      portion and the underlying basis for that is the

1 government has the burden of proof in the merits and  
2 if the defense is offering something that would  
3 attach an element of one of the charges then the  
4 government really should be put on equal footing to  
5 have access to that. That same argument would not  
6 apply in sentencing.

7 THE COURT: Why not?

8 MR. COOMBS: Because in sentencing you're  
9 dealing with this is how it's being offered in this  
10 instance not as a mental health defense and not the in  
11 any way to lessen PFC Manning's decisions on why he did  
12 what he did, but instead to explain the context, the  
13 circumstances surrounding it.

14 So Commander Multon will talk about the  
15 stressors that PFC Manning was under during the  
16 deployment.

17 THE COURT: Let me stop you. Do you agree  
18 with the government has the proffer of this testimony  
19 in their position? Do you agree with that proffer  
20 because that's what Dr. Multon is going testify about?

21 MR. COOMBS: Yes, Your Honor.

1                   THE COURT: Do you agree or believe that  
2 that is evidence concerning a mental condition of PFC  
3 Manning, one or more?

4                   MR. COOMBS: Yes, Your Honor. And when you  
5 look at -- again, if you look at 302 and 706 and you  
6 consider them together, the 706 report, an accused can  
7 be forced to undergo a 706 board.

8                   So if the government's theory were  
9 correct that any time you offer any sort of evidence  
10 in mitigation extenuation, and it could be something  
11 as simple as an eating disorder or alcoholism or  
12 gambling addiction, anything along that line, if  
13 there was a 706 report you offer something like that  
14 in sentencing that is totally unrelated to whether  
15 or not the individual has the ability to stand  
16 trial.

17                  Now the government gets access to the  
18 706 report, the long form report. Any time you  
19 offer something like that in sentencing, that can be  
20 the case when you consider an accused, as I said,  
21 can be forced to undergo a 706 board by the military

1       judge, by the government, by the investigating  
2       officer, and then you would be in a position where  
3       if you were forced to undergo a 706 board and this  
4       is why the privilege applies to everything because  
5       the results in the board and the statements are  
6       based upon the interaction with the accused.

7                   So the ultimate opinions by the board  
8       members, their testing, is based upon the responses  
9       they get from the accused. So an accused now is  
10      forced to cooperate with the 706 board and then if  
11      he offers anything or she offers anything in  
12      sentencing, again, totally unrelated to capacity  
13      issue, now under the government's argument you would  
14      have full access to long form 706 board.

15                  THE COURT: Following that with the long  
16      forms 706 board is addressing the same issues that the  
17      defense is bringing up in extenuation of litigation.

18                  MR. COOMBS: There would be a better tie in  
19      argument if, in fact, the defense -- well, two -- in  
20      two instances. If the defense's expert was relying  
21      upon the 706 board then you have perhaps a fairness

1 argument.

2                   The government has their expert in court  
3 today watching the proceeding. If my expert was, in  
4 fact, relying upon the 706 board and that was a  
5 major factor in his opinion, well, you would have a  
6 fairness argument that their expert shouldn't be  
7 entitled to the same information, and that's really  
8 what goes towards the government's full request, if  
9 you want the entire basis of your expert's opinion  
10 they're going to have it. So they are place at  
11 equal footing. So there is not an issue where the  
12 government is operating under a deficiency.

13                   Second in sentencing and in this case  
14 the evidence of the gender identity issues, the  
15 evidence of the stressors that he was undergoing, is  
16 being offered in mitigation and extenuation to  
17 explain the circumstances surrounding the offense.

18                   It's not being offered to lessen the  
19 responsibilities, not being offered --

20                   THE COURT: If it's an extenuation of  
21 litigation it kind of is.

1                   MR. COOMBS: It's mostly to explain to the  
2 Court what was going on, and to the extent that that is  
3 something that the Court takes into account and maybe  
4 lessens the punishment, yes; but it is to provide  
5 context and circumstances as to what was going on  
6 during that time period, but it's not in any way to  
7 take away responsibility for the offense and that's  
8 really what 302 and 706, when you read them together,  
9 is designed to address, and that's why the rule  
10 specifically states and even in Harris the -- not  
11 Harris, but Clark, the case the government cited, they  
12 reference the fact that if the defense does not raise  
13 an insanity defense the government does not get access  
14 to the report.

15                   THE COURT: Where does it say that?

16                   MR. COOMBS: It's within the passage of  
17 what they cite, the government cited as well. I'll  
18 find that in a second, Your Honor.

19                   THE COURT: If you're looking at page 7  
20 you're talking about the line, once the defense offers  
21 expert testimony concerning an accused mental condition

1 and MRE302 allows the military judge to provide the  
2 government with (INAUDIBLE) after redacting the accused  
3 statements.

4 MR. COOMBS: No, Your Honor. I'll find the  
5 quote.

6 I believe, I'll find the exact passage,  
7 of where it is in the Clark opinion, but 302C, which  
8 the Clark opinion cited, it states, if the accused  
9 fails to present an insanity defense or does so only  
10 through lay testimony, for example, a trial counsel  
11 will not receive access to the report.

12 That passage within the 302C discussion,  
13 the analysis, if -- you can't read that in and that  
14 have that reconcile that anytime with the idea that  
15 any time you put any mental health information that  
16 they get access to the long form report.

17 THE COURT: Why not?

18 MR. COOMBS: Because you wouldn't say if  
19 the defense doesn't offer an insanity defense in this  
20 case or does so only through lay testimony the  
21 government doesn't get access to the report. There

1       would be no reason to state that.  Instead of what you  
2       would say, if the accused doesn't offer any sort of  
3       mental health information or testimony the government  
4       will not get access to it.

5               I think if defense believes if you  
6       follow the government's reading of the rule then any  
7       time a 706 board is done the defense would know that  
8       if we offer any sort of mental health testimony,  
9       whether or not that's -- I don't believe the  
10      government is limiting it to just expert testimony,  
11      but if somebody gets on the stand and says, you  
12      know, what I saw --

13               THE COURT:  There was a specific exception  
14      for lay testimony?

15               MR. COOMBS:  In instance the exceptions  
16      both lay testimony and for insanity defense, but under  
17      the government's argument if you offer any sort of  
18      mental health, if you put that in issue during  
19      sentencing they get access to the full report.

20               THE COURT:  The rule itself says expert  
21      testimony.

1                   MR. COOMBS: Correct, Your Honor, but the  
2 government's argument is not limited to that, and the  
3 rule itself says, or at least the discussion says, if  
4 you fail to present an insanity defense they don't get  
5 access to it.

6                   So the defense believes when you look at  
7 it in its entirety the government's not put at a  
8 deficiency. Our expert's not considering the report  
9 and hasn't considered the report. There is no  
10 reason for the government to get access to the full  
11 report. It is a fishing exception to get access to  
12 the full report.

13                   What we're offering in sentencing is not  
14 an attack on any mens rea element of the offense and  
15 there's no case that would support the government's  
16 position that they should have access in sentencing.

17                   THE COURT: Is the defense aware of any  
18 case which addresses this rule and the given of the  
19 long form in a sentencing case?

20                   MR. COOMBS: I believe, Your Honor, there  
21 is a unreported Air Force case that talked about giving

1 a long report in sentencing. I don't know the facts of  
2 the case.

3 THE COURT: Do you know the name of the  
4 case?

5 MR. COOMBS: I can get that, Your Honor.

6 THE COURT: Thank you. Do you know where  
7 any case where a military judge has been refused  
8 requiring the defense to give the long form for the  
9 government when they introduce mental health evidence  
10 in sentencing?

11 MR. COOMBS: No, Your Honor.

12 THE COURT: Okay. If you have that case,  
13 the Court would appreciate the name of it.

14 MR. COOMBS: Yes, Your Honor, I'll find it.

15 THE COURT: Thank you. The Court is going  
16 to take this issue under advisement understanding that  
17 the witness also coming tomorrow, this will be the  
18 first order of business for The Court. So you'll have  
19 a ruling hopefully by the end of the day.

20 Is there anything else we need to  
21 address before we proceed to the beginning of the

1 defense case?

2 MR. COOMBS: We may just need just a  
3 ten-minute recess to ensure that the first witness is  
4 here.

5 MAJOR FEIN: Didn't get a chance to talk to  
6 Mr. Coombs. He is here and ready to go.

7 THE COURT: Do you want to take a  
8 ten-minute recess or are you ready to go?

9 MR. COOMBS: Ready to go, Your Honor.

10 The defense calls Colonel David Miller.

11 You've previously been sworn and I want  
12 to advise you that you're still under oath.

13 THE WITNESS: Okay.

14 MR. COOMBS: Please take a seat.

15 DIRECT EXAMINATION BY MR. COOMBS:

16 BY MR. COOMBS:

17 Q Sir, I want to start off by asking you a  
18 few questions about the brigades guidance regarding  
19 selecting those members who would or would not deploy?

20 A Okay.

21 Q Sir, approximately 60 days prior to the

1 deployment your unit conducted a SRC, a special  
2 reporting code scrub; is that correct?

3 A Consultant and readiness, yes.

4 Q And can you explain for The Court what that  
5 is?

6 A I'll describe. It's not a one-day event.  
7 It's something that's done continuously, not just for  
8 deployment but on a return basis, for example, my unit  
9 at (INAUDIBLE) required to do readiness reviews of  
10 their deployment rate of status. So everything from  
11 your medical status to your gears being up to date, all  
12 of those things are required to be squared away and  
13 properly taken care of before you deploy are done and  
14 there's a checklist that goes with that.

15 Q Why would you do that 60 days out?

16 A Well, 60, 90 days you're looking at the  
17 roster. It's very hard to make sure you know who can  
18 and can't deploy. So you've got an accurate read on  
19 what your deployment strength is going to be and how  
20 many folks you're going to have.

21 Q What guidance did you give to your brigade

1 regarding selecting those members who would not deploy?

2           A       Well, the first guidance is standard Army  
3       guidance, which is start with the readiness checklist  
4       and that says if a soldier has a physical profile, for  
5       example, and they can't wear a body armor then on the  
6       first screening they're not deployed. If they've got a  
7       medical condition that can't be treated in theater or  
8       if they have some kind of medication that couldn't be  
9       administered underneath conditions in the particular  
10      place (INAUDIBLE) than that person may not be  
11      deployable.

12           So the guidance I gave is we would scrub  
13      our rosters very closely to ensure that we get very  
14      accurate data down to the individual who is and is not  
15      deployable by those standards, and then there's a  
16      screening criteria of based on what we know what we're  
17      going to do (INAUDIBLE) even though we don't need that  
18      checklist to deploy and perform some kind function  
19      within the limits of their constraints.

20           We just wanted to make sure we had  
21      (INAUDIBLE) very, very, very accurate (INAUDIBLE) and

1 make sure we down range and for those who couldn't they  
2 were going to get the proper attention for whatever the  
3 reason was that they were not deployed.

4 Q What was your required strength level to  
5 deploy?

6 A There's not a required strength level. The  
7 goal is to deploy at that time that time I believe it  
8 was a code of 9090 percent of our strength.

9 Q And do you recall if you have any units  
10 that were close to not making that goal of  
11 9090 percent?

12 A No, not really. The whole purpose of the  
13 scrub is to have that read. So that's why I say it  
14 wasn't just a 60 days out, we started looking at  
15 that -- ever month the Army every unit in the Army  
16 submits a unit status report and on that report you  
17 report every month of every year what's your current  
18 nondeployable is.

19 So it's not an unknown thing for any unit,  
20 but what you're looking at closely is how can you get  
21 that reduced. For example, soldiers that are being

1       separated from the Army for chapters for adverse  
2       actions and that kind thing are on that nondeployable  
3       list.

4               One of those look at that list very closely  
5       and do what you can do to expedite their separation  
6       from the Army before you deploy so the rear detachment  
7       is not left with that task and those additional folks.

8               We were looking at the goal all along, but  
9       I don't think we were in a position where we were at a  
10      fear of not making our 90 percent.

11              Q        Is part of that scrub and looking at that,  
12       did you have members of your brigade brief you on  
13       nondeployables?

14              A        Yes. I met with my brigade commanders  
15       initially several months out. Monthly we started  
16       looking at it pretty close, and that came down within  
17       the last 60 days probably looking at it probably twice  
18       a month or where I meet with my battalion commanders  
19       and review their rosters and ensure that they were  
20       tracking, you know, closely their status and making the  
21       commanders' decisions on who they thought should or

1       shouldn't deploy and we had the right read on how much  
2       support we were going to need to get medical things  
3       taken care of ands the separations I mentioned already.

4           Q        You talked about trying to ensure that list  
5       was reduced as quickly as possible before the  
6       deployment so you didn't have a large detachment.

7                   Was there any pressure but the on the unit  
8       to reduce the nondeployable list?

9           A        Two things. I didn't say that we do as  
10      quickly as possible. I just said that we were managing  
11      all along. That's why to refrain from being into a  
12      panic mode at the last days going out, that's why you  
13      look at it all the time.

14                   So I wouldn't characterize it as quickly.  
15      I would characterize it as efficiently as possible. I  
16      wouldn't call it pressure. I would call it responsible  
17      guidance from the command Army wide to do what we  
18      should be doing which is take every able soldier down  
19      range and be good stewards of American resources. In  
20      this particular case this most important resource which  
21      is our human soldiers.

1                   There again taking as many of the soldiers  
2 as you possibly can. That's what we do.

3                   Q       Did your brigade S2 section have a shortage  
4 of intelligence analysts?

5                   A       Army wide even now there's a general  
6 shortage of intel officers and analysts.

7                   Q       Simply though your brigade did you have a  
8 shortage of junior intelligence analysts?

9                   A       I think we did.

10                  Q       And can you tell me what you recall about  
11 that?

12                  A       Well, so analysts, there's the standard  
13 table of organization and equipment requirements for  
14 analysts. In common terms we fight, you can always use  
15 more. So we built company intel teams which is a  
16 common technique across the Army even now. Those slots  
17 are authorized analysts but that's a good place for  
18 them to be to get the most intelligence out of a  
19 competent insurgency which is the bottom up feed of  
20 information.

21                  So we had a shortage of intel analysts and

1       we put the analysts in the most important slots  
2       available, and that was truthful intel officers as  
3       well; but we had our requisite share as compared to any  
4       brigade that was going down.

5           Q       If I understand your testimony, you didn't  
6       have a shortage from an intel standpoint of the numbers  
7       that you were authorized, but you did have a shortage  
8       of what you would have desired?

9           A       I think we have some shortage I believe  
10      below a hundred percent. I don't remember the exact  
11      number, but I'm going to guess this is a probably  
12      something like somewhere between 85 and 90 percent  
13      fill. That's a pure guess.

14          Q       Now, from your perspective was any pressure  
15      placed on the brigade S2 section to take soldiers with  
16      them that shouldn't be deployed.

17          A       No. From my perspective there wasn't any  
18      pressure on the anybody to take a soldier who shouldn't  
19      deploy down range.

20          Q       Prior to the deployment, did the brigade S2  
21      section ever raise an issues concerning whether or not

1 PFC Manning should deploy?

2 A Not to my knowledge.

3 Q Prior to the document Major Clossan was  
4 your brigade S2?

5 A Yes.

6 Q And you had an opportunity to review his  
7 duty performance?

8 A I did.

9 Q What type of duty performance was Major  
10 Clossan?

11 A From my perspective he was an average major  
12 in his overall performance. He was less than average  
13 on his ability to conduct a technical aspect of his job  
14 which most important to me was providing analyzed  
15 intelligence in a manner that was usable to the  
16 commanders.

17 Q From your perspective, was Major Clossan a  
18 strong leader?

19 A Not particularly strong, but I would also  
20 say not particularly weak either from my vantage point.

21 Q Did you know from your perspective how

1 Major Clossan supervised and managed the personnel in  
2 the S2 section?

3 A I didn't have the ability on a daily basis  
4 of that.

5 Q Who was the brigade S2 NCOIC prior?

6 A Sergeant Atkins.

7 Q At any time did anyone within your brigade  
8 complain or alert you to a complaint that Major Clossan  
9 abdicated his responsibilities to supervise S2  
10 personnel?

11 THE COURT: Yes.

12 CAPTAIN MORROW: Objection, Your Honor,  
13 offered as hearsay.

14 MR. COOMBS: Let me finish the question,  
15 please. I'll just finish the question and I'll  
16 respond.

17 BY MR. COOMBS:

18 Q At any time did anyone within your brigade  
19 complain or alert to you a complaint that Major Clossan  
20 abdicated his responsible to supervise all S2  
21 personnel?

1                   THE COURT: Before you answer let me --  
2                   MR. COOMBS: My response, ma'am, is not  
3 offered for the truth of the matter asserted, but the  
4 effect on the listener.

5                   CAPTAIN MORROW: We'll withdraw the  
6 objection.

7                   THE COURT: Proceed. Overruled.

8                   THE WITNESS: No.

9                   BY MR. COOMBS:

10                  Q        Were you ever made aware whether or not at  
11 any point afterwards that Major Clossan abdicated his  
12 responsibility to supervise S2 personnel to Master  
13 Sergeant Atkins?

14                  A        No.

15                  Q        That was never raised to you at any point  
16 during the 15-6 investigation?

17                  A        Not that I recall.

18                  Q        Did there come a time when you removed  
19 Major Clossan from his duties as the S2?

20                  A        Yes.

21                  Q        When was this?

1           A       I don't remember the exact dates, but I'm  
2 thinking about January February time frame, if I  
3 recall.

4           Q       Of 2010?

5           A       Right.

6           Q       So during the deployment?

7           A       Right.

8           Q       Was it unusual for you to remove a key  
9 brigade staff member during a deployment?

10          A       Yes.

11          Q       Had you given thought to removing Major  
12 Clossan prior to the deployment?

13          A       Yes. In the aspect that those kind of  
14 things usually are something that you don't just wake  
15 up and decide to do. I had been working with him on  
16 his ability to perform those skills I described earlier  
17 and was not making much progress and I was concerned  
18 about the impact that was going to have operationally  
19 on our ability to carry out our mission.

20          Q       Why did you choose to remove him in the  
21 January February time frame?

1           A       During the deployment the elections were  
2 approaching.  We were working on building capacity with  
3 our Iraqi counterparts intelligence and analysts a  
4 critical part of that and he still wasn't providing  
5 that kind of analysis that we needed for the commanders  
6 on the ground from the operational standpoint and to  
7 train our Iraqi partners.

8           Q       Who did you replace him with?

9           A       Captain Steve Lim.

10          Q       Was it common to replace -- was it common  
11 to have a captain as your brigade S2?

12          A       Not particularly.  We mentioned the intel  
13 officer shortages.  So it wasn't unheard of to have a  
14 captain filling a major's job or to have a lieutenant  
15 filling a captain's job (INAUDIBLE) I have all  
16 lieutenants filling captain intelligence officers at  
17 the battalion level analogous positions to the brigade  
18 S2.

19          Q       When did you select another major to  
20 replace Major Clossan?

21          A       Two reasons.  The division commander had

1 offered some majors from his staff to replace our  
2 brigade S2 (INAUDIBLE) at assessment of our majors they  
3 are all okay. I didn't see any particular shining star  
4 that was going to make things right overnight and they  
5 didn't have the knowledge of our area of operations the  
6 way somebody from the inside was.

7 Captain Lim who had done been in the  
8 brigade for sometime. He had be a battalion S2 on a  
9 previous deployment. He had proven leadership skills  
10 as company commander and he had proven ability to  
11 translate intelligence in the terms that the commanders  
12 could understand from his previous deployment where he  
13 had performed very well and my observations of him  
14 working as the military intelligence company commander  
15 and providing direct assistance to the brigade S2 shop.  
16 So I couldn't think of a better available fit then  
17 Steve Lim.

18 Q And was it your determination that January  
19 February was when you needed to replace Major Clossan  
20 with a captain?

21 A I had consulted with some other people,

1 assistant division commanders, who had direct oversight  
2 of our area of operations and some other folks and  
3 consultation with him and some others, I determined  
4 that rather than drag this out it was better to make a  
5 call now and that would -- to delay any longer, while I  
6 can't predict the future, would potentially be even  
7 more adverse (INAUDIBLE) it had been.

8 So that was the best time, and the  
9 elections were approaching so it was a good time to  
10 make sure we had things going in the right direction.

11 Q Did you also, sir, have an opportunity to  
12 review the duty performance of Master Sergeant Atkins?

13 A Not on a regular basis, not really.

14 Q Based upon your limited ability to see him  
15 and what was reported to him, did you form an opinion  
16 as to what type of duty performer Master Sergeant  
17 Atkins was?

18 A No.

19 CAPTAIN MORROW: Lack of personal knowledge  
20 or his ability to testify if he didn't have the ability  
21 to form --

1                   THE COURT:  He's just testified that he  
2 hasn't formed an opinion.

3                   Are we going any further down this road.

4                   MR. COOMBS:  Yes.  I have a sworn  
5 statement.  So I can try to mover the sworn statement.

6                   THE COURT:  Overruled.

7                   Go ahead.

8                   BY MR. COOMBS:

9                   Q        Sir, I'm handing you what's been marked as  
10 defense kilo kilo kilo for identification.  If you  
11 would, sir, just take a look at that?

12                  A        (Witness reviewing document.)

13                  Okay.

14                  Q        Sir, is that your sworn statement?

15                  A        It is.

16                  Q        And when did you give this sworn statement?

17                  A        I gave it to Lieutenant General Caslen  
18 after we returned from deployment and the Army's  
19 investigation into circumstances surrounding the  
20 incident were being looked into.

21                  Q        Sir, if you would turn to page 3 of the

1 statement?

2 A Yes.

3 Q Do you see a section called intelligence  
4 section?

5 A Yes.

6 Q And do you see a section number two Master  
7 Atkins' performance as a NCO?

8 A Yes.

9 Q During that time period did you have an  
10 opinion that he was a marginal duty performer?

11 A Yes.

12 Q Around that he wasn't quite bad enough to  
13 relieve or be replacement?

14 A Yes. So that statement I made in the  
15 context of my interview with General Caslen and where  
16 it came from and where my information that that comment  
17 came from was from my command sergeant major who had  
18 also been in the brigade for quite some time. He had  
19 been the battalion command for our sergeant major for a  
20 commands DSTB battalion. He had been the command  
21 sergeant major one of our battalions and at that time

1 he had just moved up to being the brigade command  
2 sergeant major after we redeployed and when he came up  
3 to the brigade he saw Master Sergeant Atkins who used  
4 to be in one of his battalions before and he made a  
5 come that he was surprised to see him working at the  
6 brigade because he thought that he was a marginal  
7 performer.

8 So my comment to General Caslen was based  
9 on my translating to him what I had gotten from the  
10 Commander Sergeant Major Jones.

11 Q So if I understand you correctly then you  
12 did not form -- you had no opinion as to the brigade  
13 NCOIC or the S2 section?

14 A Not directly. I trust my current sergeant  
15 major. So I was --

16 THE COURT: What is his name?

17 THE WITNESS: The sergeant major?

18 | THE COURT: Yes.

19 MR. COOMBS: Benjamin Jones.

20 BY MR. COOMBS:

21 Q So again it's important that here today we

1 get your opinion and not something that's necessarily  
2 relayed to you by somebody else.

3                   Prior to speaking with command sergeant  
4 major, did you have an opinion regarding your brigade  
5 S2 section's NCOIC?

6                   A      I didn't have any strong opinion. On my  
7 casual observations I would say he was a mediocre  
8 noncommissioned officer.

9                   Q      Sir, at any time did anyone complain to you  
10 or through your brigade staff about Master Sergeant  
11 Atkins leadership skills?

12                   THE COURT: Hold on.

13                   CAPTAIN MORROW: We object to this line of  
14 questioning as improper under article 404, character  
15 evidence related to Master Sergeant Atkins.

16                   THE COURT: Mr. Coombs, just briefly if you  
17 would where are you going with this testimony?

18                   MR. COOMBS: Yes, Your Honor. Not  
19 character evidence under 404, but this line of  
20 questioning and other line of questioning from our  
21 witnesses is extenuation and mitigation evidence. The

1 defense's position on that is it explains the  
2 circumstances surrounding how the defense happened  
3 within the S2 section.

4 THE COURT: I'm going to overrule it.

5 Go ahead.

6 BY MR. COOMBS:

7 Q So again I'll go back to my question. Any  
8 time did anyone within your brigade staff complain to  
9 you about Master Sergeant Atkins' leadership?

10 A Not that I recall.

11 Q At any time did anyone in your command make  
12 a recommendation recollection to remove Master Sergeant  
13 Atkins from his duty position?

14 A Never.

15 Q So roughly how many soldiers deployed as  
16 part of your brigade?

17 A About 4,000.

18 Q And during the deployment did you track how  
19 many command directed mental health evaluations you had  
20 in your command?

21 A I didn't track by total tally, but I did

1 track in general when soldiers were getting command  
2 directed. We had about 24 or 25.

3 Q Do you recall reporting that number within  
4 your sworn statement?

5 A I think I did.

6 Q And so based upon what you just said, am I  
7 correct that you had roughly 24 command directed mental  
8 health evaluations s during the deployment?

9 A Yes. I think we had about 300 overall  
10 behavioral health referrals and of them 24 were command  
11 directed.

12 Q Were those command directed mental health  
13 evaluations briefed to you?

14 A The results of the evaluations?

15 Q Just the fact that they were done, was that  
16 one of your commanders' critical information reporting  
17 requirements?

18 A Yes. The fact when it was command directed  
19 I would get told this soldier was command directed for  
20 behavioral health, not results of what came out of the  
21 analysis.

1           Q       Who was the release authority from theater  
2 if you're going to redeploy somebody?

3           A       I was for those events. I was trying to  
4 recall. We had to send those for a division.

5 (INAUDIBLE) I never got any of them denied or  
6 questioned by anyone at division.

7           Q       Sir, during the deployment did you approve  
8 of any release from theater requests for mental health  
9 reasons?

10          A       I believe I did. I can't recall the  
11 specific ones.

12          Q       Do you recall reporting that in your sworn  
13 statement?

14          A       Of the -- we had a number. I don't recall  
15 what the number was.

16          Q       If I showed you your sworn statement would  
17 that help refresh your recollection?

18          A       Sure.

19                   I'm going to guess probably about six or  
20 seven.

21          Q       I'm handing the witness exhibit defense

1       kilo kilo kilo for identification.

2               Sir, if you would just look at that  
3       yourself. I believe if you look to page 3. Once  
4       you're done looking at that just look up and I'll  
5       retrieve it and I'll ask my question again.

6       A        Okay.

7       Q        I'm retrieving from the witness defense  
8       Exhibit kilo kilo kilo for identification.

9               Sir, does that refresh your memory?

10      A        Yes.

11      Q        Sir, roughly -- how many approvals did you  
12       have for release from theater for mental health issues?

13      A        Sixteen.

14      Q        Did you put out any guidance regarding what  
15       types of requests that would you approve or disapprove  
16       when it came to mental health issues?

17      A        No. I think that would be very  
18       inappropriate.

19      Q        How did individuals in your command know to  
20       when to request a release from theater due to mental  
21       health issues?

1           A     Usually on a recommendation from the  
2     doctor.

3           Q     Was that all the 16 you had where the  
4     doctor --

5           A     If they were behavioral health, it had to  
6     have a doctor's recommendation.

7           Q     Did you have any instances in which just  
8     the command supported the return of the soldier, the  
9     redeployment of the soldier.

10          A     So I recall of a case, and there may have  
11     been a few others that were not mental health related.  
12     They may have been traumatic, somebody's life, for  
13     example.

14                 One comes to mind that I can get specific  
15     on if you want me to. That particular family situation  
16     for compassionate reasons the command decided it was  
17     best to allow that soldier to deal with the  
18     circumstances that their family was dealing with and  
19     there was no medical piece to that individual soldier's  
20     situation.

21          Q     Sir, if the immediate command of a soldier

1 believed that had a soldier should be return home due  
2 to either being risk of harming himself or others,  
3 would this be something that you would likely approve  
4 or would you require something more than the command's  
5 recommendation?

6 A It would still have to have a medical piece  
7 an what the doctors were thinking about.

8 Q If you have a disagreement between the  
9 command and the doctor do you know right now how would  
10 you decide that or would it be case by case?

11 A It would have to be case-by-case.

12 Hypothetical in that situation they're pretty  
13 dangerous.

14 Q I guess you wouldn't have a hard fast rule?

15 A I don't think you can. It kind of like  
16 having rules for adjudicating UCMJ.

17 Q Are you familiar with what a DROG is?

18 A Yes.

19 Q How are you familiar with that?

20 A It's a standard process for the military  
21 particularly in the military police in particular for

1 tracking completion of incidents that are reported  
2 about the reports and might result in adverse actions.

3 Q In what is DROG -- based upon your  
4 understanding when is a DROG initiated against somebody  
5 with a security clearance?

6 A Well, it's not necessarily with someone  
7 with a security clearance or not. That's really not  
8 relevant to the DROG being initiated.

9 If an incident occurs that might result in  
10 an adverse action, someone gets a DUI they was charged  
11 under UCMJ article 15 or summary court martial then a  
12 DUI would be initiated.

13 Q And maybe I'll just back up slightly. What  
14 is your understanding of the purpose of a DROG and who  
15 it goes to?

16 A My understanding, the purpose of a DROG is  
17 to confirm the completion and document that the  
18 commanders followed through on a particular incident  
19 that resulted in a DROG been issued in the first place.

20 Q Sir, do you still have defense Exhibit kilo  
21 kilo kilo for identification?

1           A       No.

2           Q       Handing this to you again. If you would,  
3       sir, turn to page 4 of Defense Exhibit kilo kilo kilo  
4       for identification?

5           A       Okay.

6           Q       With regards to on a DROG that has to go  
7       through the unit security manager?

8           A       Yes.

9           Q       And, sir, is that dealing with a soldier's  
10      security clearance?

11       A       It does, among other things, yes.

12       Q       And what is your understanding of that?

13       A       So when the DROG is going through, if I  
14      understand your question right, one of the checks on it  
15      is checking on the soldier's security clearance and  
16      determining if action should be taken on that clearance  
17      based on whatever incident occurred.

18       Q       Do you know, sir, who is responsible for  
19      initiating a DROG?

20       A       The commander.

21       Q       Is that which level command, sir?

1           A       Company level.

2           Q       Who was PFC Manning's company commander in  
3 December of 2009, do you recall?

4           A       I think it was Captain Druer or Captain  
5 Fulton.

6           Q       And with regards to Druer was he ever a  
7 major during the time of his company command?

8           A       Yes, I believe he was.

9           Q       And from your in terms of memory what type  
10 of commander was Major Druer?

11          A       He was a pretty good commander. He was  
12 pretty even level headed commander in general.

13          Q       Was Major Druer ever relieved of his  
14 command during the deployment?

15          A       He was.

16          Q       When was that, sir?

17          A       I don't know the exact time frame, but  
18 that's when Captain Fulton came in to replace him. I'm  
19 going to say probably December January time frame. I'm  
20 guessing.

21          Q       Of 2010?

1           A       Right.

2           Q       And, sir, you said Captain Fulton, does  
3       Matthew Freeburg sound right?

4           A       I'm sorry, Freeburg. I'm getting another  
5       officered confused with Freeburg. Thank you.

6           Q       No problem, sir.

7                   So at the time that Major Druer was  
8       relieved, was it your opinion that he was making good  
9       decisions?

10          A       I can't speak to all of the decisions he  
11       made. He was relieved because he was untruthful about  
12       the property accountability reports that he was making.

13          Q       Are you aware of whether or not major Druer  
14       ordered a command directed mental health of PFC Manning  
15       in December of 2009?

16          A       I don't recall that one. I recall there  
17       was one in May, I'm sorry, I think there was a referral  
18       somewhere in that time frame.

19          Q       Were you ever briefed on any incident  
20       involving PFC Manning in December of 2009?

21          A       No.

1           Q       And I'm just going to ensure that you're  
2 not aware of it, I'm going to ask you if these facts  
3 jog your memory at all.

4           A       Okay.

5           Q       Were you ever informed of an incident in  
6 which PFC Manning flipped a table during a counseling  
7 session?

8           A       No, not until after the redeployment and  
9 all of this trial proceedings occurred. I've heard  
10 about it in the past months.

11          Q       So I want to go ahead and make sure I  
12 understand the divide. At the time of the deployment  
13 you were not aware of an incident which PFC Manning  
14 flipped a table?

15          A       Correct.

16          Q       When did you find out about that incident?

17          A       It was sometime after the General Caslen's  
18 investigation were initiated. So after August of 2011  
19 and sometime during the time period of that  
20 investigation was going on.

21          Q       Do you think based upon what you found out

1 about in it August of 2011 that this should be an issue  
2 that was addressed to you in December of 2009?

3 A Not necessarily.

4 Q Why not, sir?

5 A Well, in context I mean a soldier flipping  
6 a table's isn't the kind of thing that would he rise to  
7 the brigade commander's level. It's something that  
8 would be handled by a squad leader.

9 Q Were you ever informed in August of 2011  
10 that soldier had to restrain PFC Manning from  
11 apparently grabbing a weapon during a counseling  
12 session?

13 A No.

14 Q You're not aware of that fact?

15 A Not exactly. There were a number of  
16 stories that were told to me about different things  
17 Manning had done. That exact one I don't remember  
18 specifically.

19 Q So going back to what you said, would  
20 normally not rise to your level a table flipping  
21 incident. If it also involved grabbing a weapon during

1 a counseling session would that rise to your level as a  
2 commander?

3 A It depends. To put it in context, you take  
4 any one of those individual incidents and not  
5 necessarily. There's a whole layer of command that is  
6 dealing with that. So it's hard for me to answer your  
7 question if this happened this incident happened.

8 Those are the kinds of things that if that  
9 event occurs, the first one you described, a squad  
10 leader probably would address it and it all depends on  
11 what's behind it and all of the other circumstances  
12 surrounding it and why did it occur.

13 A table flipping over could just be a  
14 emotional outburst. It could be a single incident that  
15 somebody just lost their cool. It could be an  
16 indicator of patterns. There's all kinds of things  
17 that go behind it. That's why I'm kind of careful how  
18 I respond to your question of a soldier grabbing a  
19 weapon. I would expect that the company commander or  
20 first sergeant could handle that.

21 I may have been made aware of it by the

1 chain of command, by the way, this thing occurred, we  
2 got a handle on it, this is what we're doing about it.  
3 So it could rise. Again it all depends on some of the  
4 specifics behind the individuals and the other things  
5 that had been going on in the organization.

6 Q During the deployment, sir, were you ever  
7 made aware of any memorandums for record that Master  
8 Sergeant Atkins wrote concerning PFC Manning?

9 A No.

10 Q After the deployment were you ever made  
11 aware of those?

12 A I don't think so.

13 Q So today as you say you haven't seen any  
14 memorandums written by Master Sergeant Atkins  
15 concerning PFC Manning?

16 A I haven't seen any, no.

17 Q Now, I want to ask you a few questions  
18 about what you did after PFC Manning was arrested.  
19 Okay?

20 A Okay.

21 Q Did you and your staff conduct an after

1           action review?

2           A       Yes.

3           Q       What was the purpose of that review?

4           A       We wanted to find out if any procedures or  
5       processes we were carrying out or not carrying out may  
6       have been part of how this occurred, and separate from  
7       that, even if they weren't part of what occurred, how  
8       are we doing across the spectrum of operational  
9       security, physical security, information assurance, all  
10      of those things, because it prompted a reason for us to  
11      take a look at ourselves and make sure we're doing  
12      things to the best of our ability.

13           Q       Sir, from your memory, after the after  
14      action review, did the brigade institute access  
15      controls on folders on the shared drive?

16           A       Yes.

17           Q       And, sir, did the brigade also limit  
18      removable media writing privileges to select computers  
19      and select individuals?

20           A       Yes.

21           Q       Sir, after the action review did the

1 brigade also require the reestablishment of random  
2 entry and exit inspection programs for T-SCIFs?

3 A Yes, I believe we did.

4 Q And, sir, did the brigade also start  
5 enforcing the rules regarding unauthorized media on the  
6 shared drive and in the T-SCIF?

7 A Yes. That I think we had been doing before  
8 that, but we certainly increased our focus on it.

9 Q And, sir, after the after action review,  
10 did the brigade draft a DROG SOP?

11 A To be honest with you, I don't remember if  
12 we did or not, but I believe we did.

13 Q Sir, from your memory then regarding that,  
14 why did you draft a DROG SOP?

15 A Again, so it's important to understand the  
16 context of the review we did. The review we were doing  
17 went beyond the scope of just responding to what  
18 occurred with Manning, it was looking at all of these  
19 processes.

20 Now DROGs, the completion of DROGs  
21 technically is an Army wide challenge. So it's just

1 like keeping up with TDY vouchers. There's a problem  
2 with every institution including Fort Meade and across  
3 the Army to file those through to completion.

4 The completion of the DROG report itself  
5 though doesn't mean that appropriate action wasn't  
6 taken. The tracker what you usually find is the  
7 commands have taken action. They just didn't close out  
8 the DROG.

9 So it's usually a matter of going back and  
10 having the commands go, hey, what did you do in this  
11 case and what did you do in this case, and they finish  
12 the DROG forms which is just writing charges were filed  
13 unsubstantiated, no action taken, and then submitting  
14 the DROG in to get the thing closed out.

15 So 90 percent of those DROGs that are open  
16 are because of administrative lack of follow through on  
17 the document itself, not that action wasn't taken to  
18 address the circumstance and to put it in context.

19 Q What guidance in general did you put out  
20 with a DROG SOP, do you recall?

21 A I do not.

1           Q     With regards do the actual filing you said  
2     that's a problem. Is it your understanding that once  
3     it's filed then that becomes sort of the historical  
4     record for other commands to see any issues with a  
5     particular soldier?

6           A     I suppose that would be one use of the  
7     DROG, yes.

8           Q     Sir, I'm going to retrieve from you Defense  
9     Exhibit kilo kilo kilo for identification.

10          A     Okay.

11          Q     Sir, thank you. I have no further  
12     questions.

13                 THE COURT: Cross examination?

14                 CROSS EXAMINATION BY CAPTAIN MORROW:

15                 BY CAPTAIN MORROW:

16          Q     Good morning. Just give me one second.

17                 Sir, I want to start with the  
18     pre-deployment, your actions regarding how to -- your  
19     review of your formation in terms of who is going to be  
20     deployed.

21                 Can you discuss the process that you went

1 through with your subordinate commanders in scrubbing  
2 rosters?

3           A       I started to explain a little bit of that  
4 earlier. So as we're moving closer to deployment we  
5 would meet to review our standing list of  
6 nondeployables and take a look at those. As I  
7 mentioned earlier, who were up for a chapters for  
8 elimination for adverse reasons, who were medically  
9 nondeployable or any other category that might fit  
10 there with a view towards reducing those numbers in  
11 case of separation is to separate as many as possible  
12 and for those who we couldn't separate on time no  
13 clearly what the rear detached would be to finish  
14 separating those soldiers.

15           Also taking a hard look at those  
16 technically nondeployable who could deploy and if they  
17 had a condition that when you look at commands  
18 deploying the vast majority of the leadership is going  
19 forward down range and a smaller rear deal with less  
20 capability to handle certain cases is back at home  
21 station.

1                   So one of the questions we would ask is  
2 could that person's situation be better dealt with at  
3 command forward and which ones couldn't, because of the  
4 conditions in theater wouldn't support that or which  
5 ones were better served with the nonrequisite  
6 leadership that were inherent in the chain of command  
7 to deal with their particular circumstances.

8                   That was one of the criteria that we looked  
9 at (INAUDIBLE) going forward on that.

10                  Q        So these were, you know, you had your  
11 company commanders first to their sort of scrub?

12                  A        Yes.

13                  Q        And they moved up and briefed their  
14 battalion commanders and then met with your battalion  
15 commanders and essentially went over the entire  
16 formation and they sort of briefed you on, hey, this  
17 guy, we're going to chapter this guy. He's mentally  
18 undeployable, et cetera. That was all information  
19 provided to you in the course of this review prior to  
20 deployment?

21                  A        That is correct.

1           Q       And, sir, I want to talk a little bit about  
2 the challenges of the rear detachment with respect to  
3 the rest of the commands going forward. Can you talk a  
4 little bit about what a brigade commander has to worry  
5 about sort of with the rear, what are the issues that  
6 arise during the deployments?

7           A       Sure. So a rear detachment does not exist  
8 at any paperwork. So it's an ad hoc formation that  
9 every unit creates out of necessity. So there's no  
10 authorization for that in our structure.

11                 So every person you leave on the rear D has  
12 to come out of the organization that you're taking  
13 forward. When you look at the demographics of a rear  
14 detachment, like I just mentioned, you have a large  
15 number of soldiers in that rear detachment that are  
16 being separated from the military usually for adverse  
17 reasons, multiple DUI, drug use, other failure to meet  
18 military standards type of conditions. You have people  
19 that are in various stages medical separation that need  
20 to be properly taken care of, treated respectfully, and  
21 go through the medical board process and separated from

1 service, or in some cases treated back to health so  
2 they can be deployed and get down range.

3 Then you have a category of administrative  
4 requirements just to keep the functions of the  
5 formation in the rear operating, weapons qualification,  
6 maintenance of the facilities that are back there that  
7 you're going to occupy when you return, and then  
8 significantly you've got (INAUDIBLE) readiness groups  
9 that are most important while you're deployed.

10 And so you're family readiness team on your  
11 rear D is a huge part of a function that you're rear  
12 detachment has to perform. So it's a very small group  
13 that you have to create (INAUDIBLE) in them a number of  
14 different circumstances.

15 There's some real challenges that go with  
16 it. So, for example, you got all of these soldiers  
17 that you're separating from the Army men who tend to  
18 have a bad attitude. So you've got to the pick the  
19 right people to be on the detachment, the right  
20 leadership, the right temperament, some strong  
21 leadership to synchronize and coordinate that effort.

1                   In our case we chose a small group of folks  
2 with limited resources to do that. I picked the best  
3 available rear detachment commander I could and the  
4 rear detachment noncommissioned officer in charge. So  
5 I selected a lieutenant colonel who had been selected  
6 all ready for a battalion command.

7                   So the Army had already marked him as in  
8 the top 10 percent or less of his particular group, and  
9 I picked the best first sergeant in our brigade to be  
10 in the rear detachment commander. A guy with various  
11 awards and that kind of things to get the right kind of  
12 leadership. An I took one step, we test organized the  
13 rear detachment to make it as efficiently as we  
14 possibly could.

15                   Q        What do you mean by that, sir?

16                   A        So I had an experience before we deployed  
17 when I first took command where I was coming back from  
18 a training event and I had a driver bringing me back  
19 from the training event and he was a little bit  
20 overweight. So I said what is his story was. It  
21 turned out that he was a medical chapter separation and

1 waiting to get out of the Army and he was not going on  
2 this deployment. He was going to go on the rear  
3 detachment, and he had been on a previous deployment  
4 and he started telling me ability his experience when  
5 he first came into the unit.

6                   He arrived late to the unit during the last  
7 deployment. So he was a late deploy. So he came to  
8 the unit while the rear D was functioning which is  
9 another function of you can bring in new soldiers, prep  
10 them and get them read to go down range and join the  
11 unit and he told me that his first experience was his  
12 squad leader when he first came to the unit from the  
13 rear detachment and he was an NCO being chaptered out  
14 of the Army for multiple drug use, and he abused, you  
15 know, him as a soldier and then he made a comment to me  
16 that sticks me to this day, he said, but, sir, that's  
17 just the way it is. That's part of the rights of  
18 passage, get to your (INAUDIBLE) that crap and you go  
19 down range.

20                   So it struck me that without some concerted  
21 concerted effort in the rear detachment is a new

1           soldier fresh to the Army wanting to do his part to  
2           serve America gets married up by happenstance with a  
3           noncommissioned officer being separated from the Army  
4           and his first is experience abusive.

5                   So I asked myself, how are we not going to  
6           let that happen.

7           Q        What did you do, sir?

8           A        We came up with the idea to organize the  
9           rear detachment so that those things would not occur.  
10          We took each battalion on the rear D and give it a  
11          specific mission. So one battalion had the separations  
12          of people, adverse actions and medical, two different  
13          subcategories, and housed them in a separate set of  
14          barracks and that changed the man to focus on that  
15          mission.

16                  Inbound soldiers that were new in the unit  
17          that were there going through staging and outward  
18          movement to deploy were in a different battalion  
19          category to keep that kind of thing from never  
20          occurring. And that's why pick the right rear  
21          detachment commander was so important because at the

1 battalion level a captain sergeant first class at best  
2 to manage their level of reattachment.

3 So we found that that methodology ended up  
4 working very well for us in preventing those kind of  
5 circumstances from occurring.

6 Q And, sir, is that sort of structure of a  
7 rear detachment. Is that something you had heard of  
8 prior to you implementing that in your brigade?

9 A No. In fact, when I briefed it to general  
10 Terry, who was our 10th Mountain Division (INAUDIBLE)  
11 he feels it was a pretty unique approach to a challenge  
12 that every unit has and we ended up sharing that  
13 methodology with other brigades as a technique that  
14 they might want to consider.

15 Q And, sir, is it fair to say that you as a  
16 brigade commander going forward, going down range, you  
17 put as much time and effort into thinking about how to  
18 set up your rear detachment as you do with the people  
19 going forward?

20 A Absolutely.

21 Q Why is that, sir.

1           A       Again, you've got (INAUDIBLE) to the  
2 leadership forward. So I knew, do down low, you know,  
3 because we have a challenge issue, I have another all  
4 the energy and capacity for at this time already to  
5 deal with those. Until the rear I'm separated by  
6 thousand of miles and I've got limited capacity and  
7 took the resources back there. So getting that right  
8 is crucial. It's crucial to take care of the families  
9 because if there's family issues.

10           Then soldiers mind coming off of what's  
11 going down range. We also want those families for the  
12 long haul in the Army, not just the one deployment. So  
13 their perspective added to about how things go during  
14 the deployment. It isn't just about, I'm okay for  
15 right now, but do I we want to make this a lifetime  
16 career thing, and the families vote as loud as anybody  
17 whether a soldier stays in the Army or not.

18           So for those reasons and making sure we  
19 had the right leadership back there to prevent focus  
20 from the mission at hand pulling attention to the  
21 rear is why you want to set conditions right up

1 front and then when you do that you have to write  
2 folks to trust that they deal with (INAUDIBLE)  
3 handle their situation.

4 Q Give me one second, sir.

5 A Sure.

6 Q Sir, let's talk about the removal of Major  
7 Clossan.

8 Major Clossan was removed because he didn't  
9 provide good intelligence products to you as a  
10 commander; is that correct?

11 A Yes.

12 Q He wasn't removed because of his leadership  
13 skills?

14 A No, not at all.

15 Q Or his management skills?

16 A No.

17 Q His deficiencies, at least in your mind,  
18 were not management related?

19 A No.

20 Q And you said on direct that Major Clossan  
21 wasn't necessarily strong or weak, it was sort of an

1 average nature?

2 A From's my observations, that's correct.

3 Q And the person who replaced Major Clossan,  
4 Captain Lim, that happened in the approximately January  
5 of 2010 time frame sir?

6 A Yes, I believe so.

7 Q And Captain Lim is an outstanding officer?

8 A Yes.

9 Q He's a top 10 percent?

10 A Top 2 percent.

11 Q Why do you say that?

12 A He is a combination of attributes and  
13 traits that we look for in the younger officers. He's  
14 a strong leader, and by that I don't mean just in  
15 imposing his will on people, motivational. He  
16 understands a larger picture, at least two levels up,  
17 so he's got great perspective that's you don't normally  
18 find in a young captain.

19 I would say at that time he was performing  
20 as good or better than most majors in my command. He's  
21 a team player and shares his expertise selflessly.

1 He's a great lead by example kind of person from  
2 everything from his physically fitness and programs to  
3 his technical competence, his care and treatment of  
4 soldiers and families. So I can't think of a  
5 particular area that I would say he had a chank in his  
6 armor, so to speak.

7 Q And he had been a battalion S2 in a  
8 previous deployment?

9 A Yes.

10 Q And generally the way the Army works is if  
11 you're a principal staff member, you know, sort of  
12 battalion level and then you may have a few jobs in  
13 there where you're like the assistant but that you  
14 eventually -- the idea is you go to brigade and become  
15 a principal staff member there?

16 A That's correct.

17 Q And, sir, also had other military  
18 intelligence officers in the command that were there to  
19 help Captain Lim if there were issues?

20 A Yes.

21 Q And in particular the brigade support

1 battalion.

2           A       Yes. Captain Paul Walters was our brigade  
3 support who was a military intelligence officer as well  
4 and so he was always lending coaching and mentally  
5 oversight to our intel team, not just to capitalize, to  
6 our intel team, not just to Captain Lim, but to the  
7 entire Intel team.

8           Q       Is it fair to say that you had another back  
9 stop there when you removed Major Clossan?

10          A       Absolutely.

11          Q       Sir, I want to talk about Captain Major  
12 Druer. He was -- he took command about three months  
13 prior to deployment?

14          A       Right.

15          Q       And he came recommended because he was  
16 older, he had had previous company commands?

17          A       Yes.

18          Q       Why is that for important an HHC commander?

19          A       HHCs in general and headquarters company  
20 for a brigade in particular is unique from a typical  
21 line company. What makes it different is if you know

1 you're a rifle company commander all of your  
2 formation's energy is pretty much going in one  
3 direction at any given time, take the hill, so to  
4 speak. That's not that complicated.

5 Headquarters company is made up of a much  
6 of desperate sections all doing different things. The  
7 range structures totally flipped from a typical company  
8 where you're run heavy. So a lot of people in a HHC  
9 out rank the company commander, all the field grades on  
10 the staff. You've got a lot of senior NCOs. You've  
11 got a brigade commander in your company. It takes a  
12 level of maturity to not be the bullheaded follow me,  
13 do as I do commander and be able to use a lot of other  
14 leadership techniques to get things done that need to  
15 get done and be value added for the command because the  
16 real purpose of an HHC commander or command team  
17 because the first time I was put in that same category  
18 in my mind is to facility the command's ability to  
19 focus on the entire brigade and not get bogged down on  
20 nuance deals of what's going on inside the company and  
21 the staff itself. So you're don't become a

1 self-licking ice cream cone, so to speak.

2 Q Sir, Major Druer was replaced by captain  
3 Freeburg in April of 2010 time frame; is that correct?

4 A I believe that's about right.

5 Q And Major Druer at the time he was the HHC  
6 commander, but he was also doing CHOPS as sort of a day  
7 job as well. Do you recall that?

8 A I think that's correct. We tried a number  
9 of different things and that was one.

10 Q What is CHOPS?

11 A It's the chief of current operations. So  
12 in the tactical operations centered brigade  
13 headquarters we've got a whole staff element overseeing  
14 what's happening throughout any 24-hour period. That's  
15 how we keep situational awareness throughout command  
16 what's going on and then resourcing allocation  
17 decisions and react to the events in the battlefield as  
18 they occur.

19 Q Sir, you said that Major Druer was replaced  
20 because there was some property accountability issues?

21 A Yes.

1           Q     Aside from the property accountability  
2     issues, was Major Druer a good commander?

3           A     He was acceptable. He was doing okay.

4           Q     What do you mean by that, sir?

5           A     The headquarters was running satisfactory.  
6     The things that I thought needed to get done were  
7     getting done transparently to the commander. So by  
8     attention the brigade XOs attention weren't get pulled  
9     into things that pulled our attention off the greater  
10    command. As I described the purpose of the command he  
11    was meeting the overall purpose of a HHC.

12          Q     But Major Druer would have taken  
13    appropriate steps if an issue had risen to his level in  
14    your view?

15          A     I believe so. He had shown that in a  
16    previous command, but he became the HHC commander.

17          Q     That would be true of Captain Freeburg as  
18    well in your estimation?

19          A     Yes.

20          Q     Sir, let's talk about Master Sergeant  
21    Atkins now Master Sergeant First Class retired Atkins.

1 First I want to the sort of back up.

2 What was the secretary (INAUDIBLE)?

3 A What was it?

4 Q Yes, what was the purpose of it?

5 A So my understanding of that purpose it was  
6 to not so much be a mirror investigation to the  
7 investigation resulting in this trial, it was an  
8 investigation to look across the Army breath and depth  
9 in terms of how we do everything from established DA  
10 policy to how we train soldiers in basic training and  
11 advance in divisional training to how we hand off  
12 soldiers from basic NIT to units that they're going to  
13 deploy to, you know, how we handle deployables and  
14 nondeployables as a holistic look Army wide, it is  
15 drill down to the brigade as a example of how all of  
16 these things were done to find out where there are  
17 things that can be adjusted, policy needs to change, if  
18 how we're training people isn't meeting adequate  
19 training. We looked at the information assurance  
20 requirements and are they adequate.

21 And, for example, Captain (INAUDIBLE) our

1 guy who does all of those things had you know 37  
2 different places to go -- I'm making that number up  
3 sometimes a variety of requirements and could we better  
4 consolidate those so they're better understood, and  
5 looking for what are the standards and are there they  
6 clear and vague.

7 It was a very hard look across the Army on  
8 where are we doing things and where can we do them  
9 better and what needs to change and that kind of thing.

10 Q Lieutenant John Castle was the  
11 investigating officer?

12 A Yes.

13 Q I know you had a number of Colonels that  
14 were kind of doing the day-to-day busy work?

15 A Yes.

16 Q And they were interviewing members of the  
17 unit in January of 2011 approximately?

18 A Yes. That sounds about right, yes.

19 Q At least, and so this goes back to Atkins  
20 now. At least with respect to Atkins, he wasn't  
21 somebody that you had visibility on; is that right?

1           A       That's right.

2           Q       Is it fair to say though that a lot of what  
3        was is provided to you with regard to Atkins by the  
4        15-6 was sort of rumor, sort of after the fact look at  
5        what happened?

6           A       Yes. After the fact I think is a very add  
7        adequate description of what I was getting at.

8           Q       Sir, let's talk about managing risk. Would  
9        describe your of philosophy in terms of where a  
10       commander needs to put his sort of best soldiers at  
11       least while deployed?

12          A       Sure. In general I don't think with my  
13        philosophy is drastically different than the commanders  
14        I served with when I was a brigade commander. You want  
15        to take the least amount of risk in theater in  
16        particular where the rubber hits the road so at the  
17        lowest levels. So I want to make sure that from a  
18        skill sets and percent fill that your line units, all  
19        of the resources they need and if you have to take risk  
20        because you only got so much of any given capability,  
21        you take risk at the higher echelons as you go up.

1                   So in general you want resource your  
2 subordinate command to make sure they got everything  
3 they need. Even if you have to take risks somewhere  
4 you take it at your level or try to push it back to the  
5 next higher level.

6                   Q        That's a command philosophy throughout the  
7 Army?

8                   A        That's a pretty common philosophy.

9                   Q        Sir, Mr. Coombs in his direct had a number  
10 of issues with respect to briefing numbers prior to  
11 deployment in terms of who you're going to leave behind  
12 and while you're deployed sending people back.

13                  Did you ever feel any pressure as a brigade  
14 commander in Iraq that you couldn't send a soldier home  
15 who needed to be sent home?

16                  A        No not at all.

17                  Q        Could you just elaborate on that, sir?

18                  A        Well, one thing commanders do the mission  
19 on accomplishing the mission at hand is the job, but  
20 hand in hand with that is taking care of soldiers and  
21 families.

1                   So commanders making calls to redeploy  
2 soldiers, I never had a commander question my authority  
3 to do that. They may ask why, but it was never done in  
4 the way you shouldn't do that and you need to keep  
5 everybody forward and that kind of thing.

6                   So the purpose for redeploying soldiers is  
7 because there's something back in the rear that's going  
8 to make things better for that soldier and a need or  
9 requirement for that individual or group.

10                  So the whole term pressure to me is just  
11 falls flat with a chain of command that's functioning  
12 properly.

13                  Q        And when you were a company commander or  
14 platoon leader or anything like that, did you ever have  
15 soldiers who got angry at you?

16                  A        Sure.

17                  MR. COOMBS: Relevance.

18                  THE COURT: Overruled.

19                  BY CAPTAIN MORROW:

20                  Q        Soldiers ever get angry with your squad  
21 leader team leader, their company commander, anything

1 like that?

2 A Yes.

3 Q That outburst of anger is that generally a  
4 reason for a initiating derogatory action?

5 A That by itself, not at all.

6 Q Why is that, sir?

7 A Well, you think about it. In anybody's  
8 daily life, whether you're in the military or not,  
9 somebody in the workplace having an anger outburst, how  
10 often does that happen? You know, it's context. So  
11 somebody getting about something by itself, there are  
12 so many tools that a leader kit bag has to handle that  
13 particular kind of a thing that, you know, it has to  
14 pass a threshold of some kind of behavior of that  
15 individual incident or some pattern that's developed  
16 over time that would cause a leader to do something  
17 that would result in a DROG.

18 Q And, sir, why do leaders need to use every  
19 tool in their kit bag in order to deal, why do we  
20 invest time and energy in soldiers?

21 A Yes. That's what the Army does. I mean,

1 in the end of the day if you talk to the chief of staff  
2 of the Army it's people, and so we're in the business  
3 of growing and developing soldiers and leaders for the  
4 long haul and to be prepared for the next level of  
5 responsibility and leadership.

6 So we're not in an environment of somebody  
7 making a mistake, kick them to the curb. It's the  
8 exact opposite. Our job is to understand them, find  
9 out what's making them tick, help them develop  
10 themselves to the next level and grow as humans and as  
11 soldiers. That's what our whole profession is built  
12 upon.

13 Q How does behavioral health treatment play  
14 into that?

15 A Well, today right now resiliency and  
16 readiness are a huge campaign across the Army, and it's  
17 not a new thing, it just has added attention and  
18 energies because we've been at war for such a long  
19 period of time and we've seen as you'd expect more  
20 behavioral health challenges across the formation.

21 When we were deployed we had behavioral

1       health teams embedded in our formation. They're part  
2       of that 4,000 soldiers. They're done ridge. What they  
3       did is they rotated around forward operating bases on a  
4       daily basis and linked up with first sergeants and  
5       company commanders. They were the behavioral health  
6       team we're here if you have anybody that wants to see  
7       them, and those were announced in our -- we do a daily  
8       tasking order and operations order that publishes  
9       things that are happening throughout the formation.

10           So even if you know in advance when these  
11       folks would show up and that's why we mentioned the 24  
12       behavioral health folks.

13           There were 300 some folks that took  
14       advantage of the behavioral the health teams when we  
15       were down range, everything from things like tobacco  
16       and sleep problems to a higher end suicidal ideations  
17       or other stressors that may be going on in their lives  
18       that were causing them to have issues that they were  
19       seeking counsel for. So we put a huge amount of energy  
20       into services for soldiers with varying behavioral  
21       health challenges and issues.

1           Q       Sir, at any point, and I'm talking early in  
2 deployment now, were there any suicides in the brigade?

3           A       We had three suicides, two deployed and one  
4 in the rear.

5           Q       Sir, at any time did you initiate a sort of  
6 a survey?

7           A       Yes. We initiated a what I call the  
8 hundred-day review.

9           Q       Can you describe that for the court what  
10 that was?

11          A       In light of these suicides and a concern  
12 that if you got three suicides who knows what else  
13 below the level of a suicide is brewing in the  
14 formation.

15          I with the consolidation of my sergeant  
16 major wanted to get a better understanding of what was  
17 the health of formation, and I mean the mental  
18 spiritual and physical health.

19          Q       Before deployment?

20          A       Yes, a hundred days in and then in the  
21 aftermath of the most recent suicide I was thinking

1 about it and how can we make sure that we don't have a  
2 climate of conditions that were contributing to this  
3 because of life is obviously critical and valuable, but  
4 also there's an impact on the total mood of the whole  
5 formation.

6 So the purpose was to -- I pulled in the  
7 brigade surgeon and all the physicians assistants. I  
8 pulled in all of the equal opportunity reps. I pulled  
9 in all of the behavioral health specialists and other  
10 folks that had a role of -- the chaplains, all of the  
11 chaplains were pulled in and all of the commander  
12 sergeant majors.

13 I wanted to come up with kind of a way of  
14 pulsing the formation to find out their how well  
15 soldiers feel about themselves, how well they the  
16 understand their job, the linkage of their job to the  
17 mission of their small unit, the linkage of their small  
18 unit to the overall mission.

19 Q Why is that important, the linkage of the  
20 small mission, the soldier on the ground, the overall  
21 mission?

1           A     Well, this is where self-worth comes from.  
2     Do you believe that what you're do every day has a  
3     purpose and it matters. So if you can make that  
4     connection from what I do every day and how it relates  
5     to the mission and how if I don't do my job the mission  
6     is not going to happen and if I can understand the  
7     importance of the mission, not just the small unit, but  
8     all the way up national security and if you have that  
9     linkage that's one of the categories that will help you  
10    have a balanced mental, physically, and spiritual sense  
11    of self.

12               It's not the only one. You've got family  
13    and all of those other things that go along, but that's  
14    one that we can help influence through active  
15    leadership. So we do this by going out and developing  
16    a list of questions that we did small unit discussions  
17    across --

18           Q     How small?

19           A     Platoon size. So those folks broke out  
20    over the next 30 days to do the sessions with the  
21    soldiers. Also a questionnaire that went with it, but

1 it wasn't part of the interview sessions. The  
2 questionnaire came back to the doctors channels.

3 So then you get a read on how the group's  
4 feeling for that level and get a general read back on  
5 that level.

6 They had a secondary task of just based on  
7 their own experience and knowledge sensing if anybody  
8 in that particular group seemed to be kind of on the  
9 periphery, if you will, a little bit out from the group  
10 norm, in any kind of behavioral matter whatsoever.

11 And if they saw that was just to give that  
12 information to the battalion level leadership so that  
13 they could follow up and just see if there's anything  
14 behind the observation that this person need, just as  
15 another check to make sure we weren't letting folks who  
16 might need some assist get that help.

17 So we put that review in place and ran that  
18 a through that hundred-day mark to get a reading on how  
19 the formation was doing.

20 Q Sir, that hundred-day survey, is that  
21 something you've seen in your units or anywhere else in

1       your team in your time in the Army?

2           A       I have not actually. I didn't want to do  
3       just do one of the standard, everybody do the EO  
4       climate survey where you get these list of 40  
5       questions, you fill out the A through D yes or no, how  
6       do you feel kind of thing and then turn it in. I  
7       wanted something more personal in nature to get all the  
8       reads you get from the personnel contact with people.

9           Q       Sir, I want to finish by just asking you  
10      about your experience with PFC Manning prior to  
11      deployment. Did you have any at any opportunity to  
12      interact with PFC Manning prior to the deployment?

13          A       There were the couple of briefs he did to  
14      the command group. Part of the deployment we were  
15      doing our -- I think as part of the global response  
16      force mission, we were doing our operations and intel  
17      updates to maintain situational awareness across the  
18      globe.

19          Q       In those opportunities to have sort of a  
20      personal interaction with PFC Manning, what were your  
21      impressions of him?

1           A       He seemed pretty squared away. These were  
2 snapshots, articulate, and had a pretty good  
3 understanding of the information -- the information  
4 that he had, I think he had a way to go with the  
5 analysis piece, but that's what I would have expected  
6 from that that level of experience.

7           Q       Give me one second, sir.

8                   CPTAIN MORROW: No further questions.

9                   Thank you, sir.

10                  MR. COOMBS: No redirect, Your Honor.

11                  THE COURT: Colonel Miller, I just have a  
12 couple of questions.

13                  Very earlier in your testimony I believe  
14 you said that you, in order to separate somebody for  
15 mental health reasons you needed a CHOP by a doctor  
16 saying this is appropriate.

17                  THE WITNESS: To redeploy them from theater  
18 I would require that there was a doctor's  
19 recommendation in that packet.

20                  THE COURT: So for other -- did you have  
21 discretion for other nonmental health related causes to

1 just say if the command says, you know, I just don't  
2 think this soldier needs to be here for any number of  
3 reasons, did you have discretion to say, I agree, I'm  
4 going to redeploy the soldier.

5 THE WITNESS: Technically, yes, because  
6 commanders override pretty much applies to pretty much  
7 anything. That's something to be very, very careful  
8 about doing without linking it to some kind of  
9 requirement or regulatory piece, but, yes.

10 THE COURT: Did you have discretion to  
11 override a recommendation from a mental health provider  
12 that says he's fine to stay here in a deployed  
13 environment?

14 THE WITNESS: Yes, I believe we -- that --  
15 that probably would have brought a lot of scrutiny.

16 THE COURT: So the rear detachment that you  
17 also testified about, do the units get reserve backfill  
18 for that or is it (INAUDIBLE).

19 THE WITNESS: There was no backfill at all  
20 for those. The only reserve backfill for the rear  
21 detachment is that the division level, the senior

1 commander, for an installation in the past few years  
2 has been the National Guard Army reserve brigadier  
3 general.

4 THE COURT: And that doesn't trickle done.

5 THE WITNESS: No.

6 THE COURT: Any follow up based on that?

7 MR. COOMBS: No, Your Honor.

8 THE COURT: Temporary or permanent excusal?

9 MR. COOMBS: Permanent, Your Honor.

10 THE COURT: Any objection.

11 CAPTAIN MORROW: No, ma'am.

12 THE COURT: Why don't we do this, let  
13 him relieve, but we will just temporarily excuse the  
14 witnesses. So you're once again temporarily  
15 excused.

16 THE WITNESS: Yes, ma'am. Thank you.

17 MR. COOMBS: If we can take a ten-minute  
18 comfort break and then we'll call our next witness.

19 THE COURT: Any objection?

20 MAJOR FEIN: No objection.

21 THE COURT: The Court is in recess until.

1 (hearing recessed at 11:35 a.m.)

2 (Deposition resumed at 11:45 a.m.)

3 THE COURT: Please be seated. The court's  
4 called to order. Are all parties present when the  
5 Court last recessed?

6 Mr. Coombs?

7 MR. COOMBS: Yes, Your Honor. The defense  
8 calls Lieutenant Colonel Brian Kurns.

9 Whereupon,

10 LIEUTENANT COLONEL BRIAN KURNS,  
11 called as a witness, having been first duly sworn to  
12 tell the truth, the whole truth and nothing but the  
13 truth, was examined and testified as follows:

14 DIRECT EXAMINATION BY MR. COOMBS:

15 BY MR. COOMBS:

16 Q Sir, if you would please take a seat. I  
17 want to start off by talking to you about your duty  
18 position in the 2009/2010 time frame.

19 What was your duty position at that point?

20 A I was the executive officer for the second  
21 brigade combat team.

1           Q       Were you the brigade XO?

2           A       Well, I think for the total amount of time,  
3 you know, somewhere between 18 to 24 months I took the  
4 job the summer before the deployment, roughly the  
5 May/June time frame, and extended all the way through  
6 the deployment. When we got I switched out back in  
7 October. So it would have been 18 months.

8           Q       May/June time frame of 2009?

9           A       To October of 2010, that's correct.

10          Q       Now, I want to ask you a few questions  
11 about, from your perspective, the brigade's guidance  
12 regarding selecting those members who would and would  
13 not deploy with the brigade?

14          A       When you say -- are you talking about  
15 nondeployable soldiers? Is that your question?

16          Q       Correct.

17          A       Well --

18          Q       The let me just ask you some questions.

19          A       I got you.

20          Q       I want to ask you some questions about  
21 that.

1           A        Sure.

2           Q        What guidance did the brigade give from  
3        your perspective of who would not deploy, the  
4        nondeployables?

5           A        Who would not deploy? It's been a while.  
6        Essentially we went straight off of Army regulations.  
7        The big things were medical. You know, there's  
8        obviously a lot of different rules for who would deploy  
9        and not deploy, but essentially that's all governed by  
10      Army regulations and medical standards and whatnot. So  
11      the guidance is simply, you know, if they meet medical  
12      stands they deploy, if they don't they don't.

13                 It's same thing goes for legal and those  
14      type of things. We didn't offer anything that was  
15      contrary to what the guidance that we were getting from  
16      the Department of the Army was.

17           Q        So if the chain of command wanted to leave  
18      someone back due to a performance issue or believed  
19      that they were unfit for the deployment duty, what did  
20      they need to do?

21           A        Just like in any case, you know, they would

1 have to be counseling packet, a pattern of showing, you  
2 know, why. So it had to have been substantiated. It  
3 couldn't just be I don't feel like this guy can deploy.  
4 They had to show cause why they're not deploying.

5 So if they were, for example, a chapter  
6 case then they would have to initiate the chapter and  
7 then they would have to have a counseling packet that  
8 would go with it that would be worthy of chaptering  
9 that soldier.

10 Q If you didn't have a chapter packet, am I  
11 understanding if the command simply said, we don't feel  
12 like deploying this guy because we don't believe he  
13 should deploy, without some sort of supporting  
14 documentation would that be supported by the brigade or  
15 not?

16 A Well, that's always when you say supported  
17 by the brigade, that's the commander's call. That's  
18 the decision between the battalion commander and the  
19 brigade commander, and you have -- you know, some of  
20 those discussions are one-on-one.

21 I wouldn't be privy to that, but in terms

1 of the guidance, we look at a packet again depending on  
2 what the stature of that was and does it meet the  
3 conditions in accordance with our Army regulations or  
4 whatever guidance had been put out or by hire  
5 (INAUDIBLE) headquarters. If it met that guidance  
6 (INAUDIBLE) he's not deployable the don't deploy. If  
7 not, then certainly the commander has discretion and  
8 that would be a call between, you know, the subordinate  
9 commander and then Colonel Miller. He would have been  
10 the one to make that decision albeit. The guidance  
11 pretty much you go along with the standard guidance we  
12 go along with whatever the factors were for that  
13 specific condition which, you know, there's a myriad of  
14 them, hundreds of different cases where that might be.

15 Q And just to make sure I understand you then  
16 if I as the company commander came to battalion and  
17 then Colonel Miller and said for whatever reason I  
18 don't believe this soldier should deploy, Colonel  
19 Miller could make that determination to say yes or no?

20 A You know, I'm not sure I can answer that  
21 question right now without -- there's so many different

1 factors involved there.

2 Q I guess what I'm getting at is: Did  
3 Colonel Miller have the final say, yes or no, or did  
4 someone above him have the final say?

5 A Again, there's so many different situations  
6 involved there. In some cases he doesn't have the say,  
7 for example, if the medical officer says someone is not  
8 deployable then he has no choice but to go with what  
9 that individual is saying.

10 You know, it's been a few years. So  
11 without going back and understanding what -- there are  
12 just so many different options out there that it  
13 would be really hard for me to say, you know, he's the  
14 final authority would be inaccurate because there are a  
15 lot of different factors involved with deployable and  
16 nondeployable soldiers in determining who was  
17 deployable and who was not, and you run through each  
18 case individually to determine, you know, if you think  
19 it's warranted or not for that soldier to deploy or not  
20 deploy based on, you know, the rules.

21 Some of those rules are up to

1 interpretation whether or not they meet the conditions  
2 for a chapter, for example, or that kind of thing,  
3 those are sometimes judgment calls, I suppose, but at  
4 the end of the day there would have to be grounds for  
5 it. There would have to be a counseling packet or a  
6 file of some sort.

7 I would say with relatively certainty that  
8 there's no situation where a commander is just going to  
9 come and say, hey, I don't think this guy's going to  
10 deploy. It would have to have been substantiated with  
11 some type of documentation that comes forward so  
12 Colonel Miller could look at it and say, yes, I didn't  
13 agree with your assessment; but if you just come to me  
14 I don't think this guy can deploy, I would find it hard  
15 to believe that Colonel Miller would approve something  
16 like that. There was quite a bit discussions back and  
17 forth for, you know, for all of these cases. As we led  
18 up to deployment we sped up -- we put quite a bit of  
19 effort into looking at these cases and trying to  
20 adjudicate who should and should not. So a lot of  
21 mental effort put into it.

1                   I'm going back three years ago. I'm not  
2 sure I can say definitively that that was the case.

3                   Q         Did anyone above Colonel Miller have to  
4 approve of a nondeployable -- if Colonel Miller thought  
5 that person shouldn't be deployed?

6                   A         Not that I'm aware of. There were  
7 certainly never a situation where someone came in and  
8 said no, this person is not doing to deploy. This was  
9 never anything from above us telling us to deploy  
10 somebody or not deploy somebody, it was -- that I can  
11 recall.

12                  Q         The brigade S2 prior to the deployment, was  
13 that Major Clossan?

14                  A         That's correct.

15                  Q         And was the brigade NCOIC for the S2  
16 section Master Sergeant Atkins?

17                  A         Yes, that's correct.

18                  Q         From your position, did Master Sergeant  
19 Atkins or Major Clossan ever make a recommendation to  
20 you regarding whether or not PFC Manning should deploy?

21                  A         No.

1           Q       From your perspective, was there any  
2 pressure placed upon the S2 section to deploy somebody  
3 that they feel shouldn't deploy?

4           A       None.

5           Q       Had Major Clossan or Master Sergeant Atkins  
6 raised a concern to you about whether or not PFC  
7 Manning should deploy, how would that normally be  
8 handled?

9           A       Well, honestly as the executive officer I  
10 was not -- they had it so the HHC for the brigade, the  
11 brigade HHC company under -- in terms of their chain of  
12 command actually fell under Lieutenant Colonel Walters  
13 who was the battalion commander.

14                 So technically all of those cases, the  
15 chain of command actually went from the section, to the  
16 company commander, to the battalion commander. While I  
17 would be involved in those discussions because  
18 obviously any impacts on the staff impacted our ability  
19 to accomplish our mission.

20                 Ultimately the decision to deploy or not to  
21 deploy a soldier or to recommend nondeployment of a

1      soldier would lie through the chain of command. While  
2      I was the supervisor of Major Clossan at the time, I  
3      technically didn't have the authority of a commander.  
4      So the command authority resided within the battalion  
5      level command, the 05 command level authority resided  
6      in the BSTB battalion which was Lieutenant Colonel  
7      Walters at the time.

8                   So they would have discussed, as I said  
9      before, at no time was there a discussion about from,  
10     what I recall, of not deploying Manning at the time.

11                Q      And you had mentioned that you supervised  
12     Major Clossan?

13                A      That is correct.

14                Q      And obviously then you had an opportunity  
15     to view his duty performance?

16                A      That is correct.

17                Q      And what type of duty performance was Major  
18     Clossan?

19                A      If I had to characterize, he was a very  
20     hard worker. He was very consciousness. I thought he  
21     was an intelligent individual, but at the same time his

1 skills were not quite up to what we are looking for a  
2 brigade S2 deployed in combat. He was unable to  
3 articulate the intelligence situation and have a cogent  
4 conversation that the brigade command was looking for.

5 So, therefore, I thought that his  
6 performance fell below the standard. He wasn't  
7 horrendous, but I felt like he wasn't quite up to the  
8 task of being a brigade S2.

9 Q And was it your opinion that Major Clossan  
10 was a weak leader?

11 A I've said that in the past. I used the  
12 term weak leader. At the time that's a hard  
13 characterization of Major Clossan. I thought his  
14 leadership could have been stronger certainly, you  
15 know, the circumstances of being deployed in combat  
16 meant that we were looking for, you know, very strong  
17 leadership. So I probably made that statement in the  
18 past, and I think his leadership could have been better  
19 in the shop, yes.

20 Q And was that actually your opinion that he  
21 was a weak leader?

1           A       That was an opinion, yes.

2           Q       Did --

3           A       But I got to characterize it a little bit.

4       Again, if you're looking at the standards that we're  
5       applying towards that position, I'm applying a very  
6       high standard to what we're looking for there because  
7       of the circumstances being deployed in Iraq. Quite  
8       frankly have we just been in a garrison environment and  
9       never deployed, Major Clossan's performance would have  
10      been adequate to sustain himself, but in combat we were  
11      looking for we're looking for -- we're making decisions  
12      that impact soldier's lives out there.

13           So if we feel like the leadership we can  
14      get better leadership someplace else, then we're going  
15      to make decisions to get the best leadership in those  
16      positions as possible. So when I say weak leadership  
17      again only in a normal garrison environment his  
18      performance would have been good enough to sustain him,  
19      but in combat we are looking for somebody who had  
20      better leadership skills. That's why we made the  
21      choice we did.

1                   Q         Recognizing that he was not a strong  
2     leader, did you put effort into counseling him and  
3     providing oversight?

4                   A         There was quite a bit of development and we  
5     took some steps. For myself personally I did counsel  
6     him. He was also provided counseling from Colonel  
7     Walters who is also another military intelligence  
8     officer. We took steps to put stronger leadership one  
9     within the S2 shop.

10                  One of those being Captain Lim who was the  
11     company commander at the time. So when we knew he was  
12     a very strong leader. So we increased his role as a  
13     part of the brigade S2 section and we made some moves  
14     to help strengthen the leadership within the shop.

15                  Q         Did you ever have the opinion that he tried  
16     to decentralize operations but didn't have enough  
17     oversight to control the S2 section?

18                  A         I know I made the statement during the 15-6  
19     investigation. You know, looking back and trying to  
20     characterize that, everything we do essentially is  
21     decentralized. So to say that he did not have enough

1 oversight at this point I'm not sure that I can say  
2 that from my vantage point within the shop itself.

3 Q Did you have the opinion, based upon what  
4 you saw at JRTC, that ideally you would have replaced  
5 Major Clossan prior to the deployment?

6 A If we had had a -- honestly, yes. If we  
7 had had a better option at the time, we would have gone  
8 with that option, but we did not. There's also, you  
9 know, like with any subordinate, you know, you're  
10 always trying to develop those individuals.

11 So we didn't want to just throw Major  
12 Clossan under the bus. We wanted the opportunity to  
13 help develop him further. At the time we felt like  
14 there was still an opportunity to develop him and get  
15 him ready for deployment. So we made a conscious  
16 decision to move forward with Major Clossan, you know,  
17 using those mitigating factors that I talked about with  
18 increased supervision, with increased leadership within  
19 the shop, to move forward and allow him to be the S2  
20 within the -- start the deployment off and make a  
21 determination later on if we felt that he wasn't up to

1 the standards.

2 Q And did you also have an opportunity to  
3 view the duty performance of Master Sergeant Atkins?

4 A Not as much -- my interactions with Master  
5 Sergeant Atkins were limited because that -- his NCO  
6 functions. His my primary responsibilities with  
7 supervisor Major Clossan, so I did, but not quite in  
8 the same manner as Major Clossan.

9 Q Did you also make the determination that  
10 Master Sergeant Atkins was a weak leader?

11 A From my, you know, limited assessment my  
12 ability to see him, I'm not in the shop. I can't see  
13 what he's doing with the soldier that's where the  
14 ultimate determination would come from, but I didn't  
15 feel that -- I didn't have overall confidence in Master  
16 Sergeant Atkins either.

17 Q So did you make the determination  
18 previously that he was a weak leader?

19 A I said that in the past. That was a pretty  
20 harsh statement. Before you to go the 15-6 you're  
21 probably overly critical of ourselves, but I definitely

1 made that statement, but, again, kind of looking back  
2 reflecting on it, you know, my level of interaction  
3 with Master Sergeant Atkins was not -- my direct  
4 involvement with him, while I saw him a lot, I wasn't a  
5 direct supervisor to him.

6                   So my characterization of him might be a  
7 little terse in maybe would need somebody with a little  
8 more direct knowledge of his actual duty performance  
9 and leadership capabilities.

10                Q        Being the supervisor of Major Clossan, were  
11 you aware of how the leadership of those in the S2  
12 section was handled as far as the leadership chain?

13                A        You know, I didn't delve into the  
14 day-to-day operations of the shop. That fell upon the  
15 OIC and the NCOIC's. I understood how the shops were  
16 organized, but, no, I did not get into the functions of  
17 how they managed their soldiers or how they led their  
18 soldiers or there delegated duties within the shops.

19                Q        At any time did anyone within your brigade  
20 complain about Master Sergeant Atkins striping  
21 supervisors of --

1           A       Not while -- you know, I found out about  
2 that after I redeployed. I've never had anybody come  
3 to me while I was actively the XO of the brigade and  
4 say anything like that to me --

5           Q       Just do make sure I understand then during  
6 the deployment and I guess until after the deployment,  
7 you didn't have any complaints to you from anyone  
8 within the S2 section about the leadership style of  
9 Master Sergeant Atkins?

10          A       Not that I'm aware of, no. I don't recall  
11 anybody coming to me and saying, you know -- I know --  
12 I can say there's the typical grumblings of, you know,  
13 Master Sergeant Atkins did this or that, but no one  
14 directly came and said this is how he managed the shop  
15 and we feel it's wrong. I don't recall anyone ever  
16 coming to me and making that type of statement.

17          Q       If I understand you correctly, you recall  
18 those type of statements after the fact?

19          A       As the matter of 15-6, the investigator of  
20 the 15-6 he told me certain things that came out during  
21 the 15-6 and I've since read the statements that came

1 out in the 15-6. So I have a privy of seeing  
2 statements that individuals in the 2 shop maid that I  
3 wasn't privy to before or during Manning's tender at  
4 10th Mountain.

5 Q Did anyone after the fact actually make  
6 complaints to you?

7 THE COURT: After the fact?

8 BY MR. COOMBS:

9 Q After the development.

10 A Make complaints. I don't recall anybody  
11 making a complaint to me. Again I recall being told  
12 that this is how things were done, but I don't remember  
13 anybody telling me and saying -- I guess you know again  
14 I'm trying to think back and how to characterize that.  
15 Again, you know, complaints in the Army come every day.  
16 So when you say a complaint no one every made a formal  
17 complaint. I certainly may have in conversation talk  
18 to somebody and they said or I like this or I didn't  
19 like this, or that.

20 So there were other leaders that were  
21 strong leaders within the shop so they may have had

1       strong opinions on how things were done, but no one  
2       ever came to me with a formal declaration of this is  
3       how things are done, and we don't think it's right.

4           Q       Do you believe prior to the deployment that  
5       Master Sergeant Atkins should not deploy as the NCOIC?

6           A       I don't recall ever thinking that he  
7       shouldn't deploy. I don't remember that being part of  
8       the conversation. I would have preferred to have  
9       stronger leadership, but I don't recall ever telling  
10      anybody that.

11           Q       I'm handing you what's been marked as lema  
12      lema lema for identification. If you would just take a  
13      look at that and when you're done just look up at me?

14           A       (Witness reviewing document.)

15                   Its says until.

16           Q       Just look at me when you're done looking at  
17      it.

18           A       Yes.

19           Q       Do you recognize what this is?

20           A       I do. This is my rebuttal to the letter  
21      reprimand that you received from the 15-6

1 investigation.

2 Q So this is something that you wrote; is  
3 that correct?

4 A It is correct. Those are my words.

5 Q And in that do you see where you reference  
6 that your belief was he shouldn't have deployed as --

7 A Ideally we would have had somebody --  
8 ideally the S2 and NCOIC (INAUDIBLE) should have  
9 deployed in their respective pockets. I didn't say  
10 they should have. I said ideally, when you put it in  
11 context.

12 Ideally I would have had somebody that was  
13 better but it doesn't mean that they weren't suited for  
14 the positions they were in at the time. Ideally I  
15 would have had liked to have a stronger S2 and NCOI  
16 team, absolutely. You know, to kind of characterize  
17 that, it doesn't mean that their duty performance ever  
18 fell below the standards. With that said, they should  
19 have been relieved. I don't believe that their duty  
20 performance ever fell that low of a level.

21 I feel that what I wanted was the most

1 competent leadership that I could possibly have. The  
2 S2 section again has a very critical component to find  
3 the counterinsurgency because of what we're doing out  
4 there.

5 So ideally I would have had, you know,  
6 stronger leadership within those sections, but at the  
7 same time there's never -- while there were discussions  
8 about Major Clossan there was never a discussion  
9 beforehand whether or not Sergeant Atkins should be  
10 removed from that position. None that I can ever  
11 recall having before that, but after the fact looking  
12 back I would say that ideally I would have liked to  
13 have stronger leadership there, but that doesn't mean  
14 they weren't qualified to be in the position they were  
15 in.

16 Q Do you recall saying that whenever you had  
17 an issue in the S2 area you would go not to Master  
18 Sergeant Atkins but then to Staff Sergeant Balonek?

19 A Sergeant Balonek was a very strong NCOIC  
20 within the section and I felt that sometimes when I  
21 need quick action to things that he was the individual

1 I could go to. He was kind of the go-to guy in the  
2 shop, but that's not untypical because, you know, if  
3 Master Sergeant Atkins is not have around I'm going to  
4 go not to the next person around just like I frequently  
5 talk to the battalion captain or the ops NCO, if  
6 there's something happening then I'm going to talk to  
7 the nearest individual, and Sergeant Balonek was an  
8 individual I felt was very competent in the shop and if  
9 I needed something I could get it done with him. So,  
10 yes, I did go to Sergeant Balonek, now Mr. Balonek.

11 Q Do you recall saying that Staff Sergeant  
12 Balonek was the lone strong NCO, the only good  
13 experienced NCO in the shop from my perspective?

14 A He was. The key term here is experience  
15 because I had been on deployment with Sergeant Balonek  
16 and he and I had worked together in 2006 and 2007 while  
17 I was the chief of operations for brigade combat team  
18 and he was an ops battle NC and so, you know, we had a  
19 professional relationship where I had worked with him  
20 and I knew his ability.

21 So I was very confident in him because of

1 the time I spent with him in Iraq in 2006 and 2007 and  
2 I was never confident in his abilities and I felt that  
3 his experience in the shop and the things he had done  
4 set him apart from the other noncommissioned officers.

5 We did have a pretty junior S2 shop at the  
6 time because we put our stronger folks into the  
7 battalion so they would have the key people down there.

8 Q Were you ever made aware at any point  
9 during the deployment any memorandums for records that  
10 Master Sergeant Atkins wrote concerning PFC Manning?

11 A Not that I can recall, no.

12 Q Have you ever seen any memorandums for  
13 record that Master Sergeant Atkins wrote concerning PFC  
14 Manning?

15 A At this point I don't recall any. You know  
16 the 15-6 was huge. So it's possible it was part of  
17 that, and I may have read it at that point. I just  
18 don't remember seeing it.

19 Q As the XO you were part of the command that  
20 was -- command group that was briefed on all DROGs; is  
21 that correct?

1           A    Not necessarily, no.  Was I part of that  
2 process, yes, but that doesn't mean I necessarily  
3 received a formal briefing on that.

4           Q    Did the brigade keep track of who had a  
5 DROG initiated against them?  Was that something that  
6 was briefed?

7           A    I believe that, you know, after the fact,  
8 after learning what was going on that we probably  
9 needed to tighten our standards up on our track systems  
10 for DROGs.  So prior to the release of the information  
11 in the Manning investigation if it was something that I  
12 had put a lot of attention into so after that, you  
13 know, I took specific actions within the staff to  
14 improve or systems and made some recommendations in  
15 order to make sure that we were in compliance with Army  
16 regulations.

17           Q    Basically your understanding at what point  
18 by Army regulations should a DROG be initiated?

19           A    Adverse action being the key one.  So  
20 whenever there's an adverse action taken against a  
21 soldier that's the main factor.  In article 15 or

1 something like that then you would initiate that  
2 process or accused of a crime or something like that.

3 Q And if a soldier with his security  
4 clearance commits say an act of violence against  
5 another soldier, would that be a basis for the DROG?

6 A Right, it would be the basis for starting a  
7 DROG. That's why I say they would be relief somebody's  
8 security clearance. Initiating a DROG is that they're  
9 going to review to see if the circumstances warrant  
10 removing their security clearances.

11 That would be sufficient reason to initiate  
12 a DROG, with an article 15 then that would be  
13 sufficient reason to do that, that's correct.

14 Q And, again, for a DROG just the fact that  
15 you initiate it does that mean that a soldier is going  
16 to loose his or her security clearance?

17 A I'm not an expert in that process, but my  
18 understanding is no because it's essentially kind of  
19 like a learning those who make decisions about security  
20 clearances so they can make a determination whether or  
21 not this person presents a risk of releasing classified

1 information.

2 Q Would it be fair to say that a DROG is  
3 paperwork trail about a particular individual that were  
4 making determinations on security clearances can see  
5 what's happened in the past?

6 A Yes.

7 Q Now, who is responsible for initiating the  
8 DROG?

9 A Typically the company commander -- I  
10 believe the company commander. I'm not an expert in  
11 the process, but I believe it's the company commander.

12 Q And in the December 2009 time frame was  
13 Major Druer the company commander?

14 A He was.

15 Q Of PFC Manning?

16 A He was.

17 Q And during the deployment, am I correct  
18 that both Major Clossan and Major Druer were removed  
19 from their respective positions?

20 A Major Druer was, but that was for supply  
21 accountability reasons. So, yes.

1           Q       I want to ask you a few questions about  
2 information assurance within the brigade. Okay?

3           A       Okay.

4           Q       Did Captain Tripco ever come to you with  
5 concerns of unauthorized media on T-Drive and SIPRnet?

6           A       Yes.

7           Q       From your memory was that -- I know it's  
8 been a while.

9           A       You know, it's really hard for me to  
10 remember that. Maybe a couple of months into  
11 deployment. You know, Tripco didn't deploy with us  
12 right off the bat. He kind of hit the unit right when  
13 we got there. So I don't remember the exact time  
14 frame, but a couple of months maybe.

15           Q       What, in generally, were Captain Tripco's  
16 concerns?

17           A       The primary concern was to the introduction  
18 of viruses on to our network. So the issues were never  
19 related to, you know, people getting information off of  
20 the networks. The problem was is that by putting  
21 software on the network, putting media on to the

1 network led to the potential of having a virus on to  
2 the networks which would interrupt our operations.

3                   So the primary concern was that there was  
4 some people playing games and stuff like that that in  
5 some of the things already existed on the networks, he  
6 was concerned with the fact that a virus could get into  
7 our network and it impacts our ability to, you know,  
8 command and control.

9                   And so we wanted to make sure that our  
10 networks remained stable and reliable for our troops  
11 down range.

12                Q        From your perspective, what did the brigade  
13 do in response to Captain Tripco's concerns?

14                A        Our response was first is to educate and  
15 make sure that everybody understands what the standards  
16 are. So initially I kind of determined that soldiers  
17 weren't quite aware that just putting things like  
18 movies and music and games on the system was not  
19 authorized. So we had to make sure everybody  
20 understood it. So we took action to brief everybody  
21 and make sure they understood the standards and there

1 from that -- whatever system was felt compromised that  
2 system would be taken off the network.

3                   Immediately if there was a computer that  
4 had something on it that was unauthorized the computer  
5 would come off the network. The was at least the  
6 guidance that we put out that would come off the  
7 network. It would be cleaned and wiped basically from  
8 doing whatever the guys do to make sure that the hard  
9 drive doesn't have any more unauthorized software on it  
10 and then it would be reintroduced to the network after  
11 it had been certified by our signal post.

12                   First time offense would be counseling and  
13 later if there's more than one offense than we would  
14 essentially up the chain of command what actions to  
15 take, but one of the things they wouldn't be allowed  
16 back on the network if there were multiple infractions  
17 of that.

18                   Q        Do you recall any instances in which that  
19 was the case where they were not?

20                   A        There was not a time where I was briefed  
21 that there was multiple infractions. There were

1        infractions that after that initial push to get  
2        everything cleaned out, there are some individual  
3        infractions out there, and we dealt with them on a  
4        case-by-case basis, but there was never a time I  
5        thought it was brought to my attention that there was  
6        multiple abuses to that and, therefore, that required  
7        anything beyond a simple counseling statement or clean  
8        up the system.

9            Q        After PFC Manning was arrested did Colonel  
10        Miller order you to take a look at the info sec across  
11        the brigade?

12            A        Yes.

13            Q        And how did you do this?

14            A        I just took my subject matter experts  
15        together. For lack of a better term called it a tiger  
16        team. We grabbed a group of subject matter experts  
17        from the S2, from the SIGO (INAUDIBLE) noncommissioned  
18        officers to physically security. So we kind of looked  
19        at a holistic approach to both physical networks to  
20        make some recommendations on how to improve our systems  
21        within the brigade.

1           Q       And in general what did you conclude based  
2 upon your review?

3           A       That there was a few recommendations that  
4 we made. The recommendations, which a lot of them were  
5 completely unrelated to what occurred here because  
6 honestly most of them wouldn't have changed anything,  
7 but we made recommendations to disable DVD drives. We  
8 made recommendations of the DROG process which is a  
9 recommendation that we solidify our standard operating  
10 procedures for DROGs.

11               There was some physical security means that  
12 I think we looked at and improved upon, and there may  
13 have been some others that I just don't recall right  
14 now, but I think the main ones were probably the  
15 rewrite capability, the DROG, and some physical screen  
16 measures, and there might have been more. I just don't  
17 recall at the time.

18           Q       And I want to talk about one of those, the  
19 DROG. Did you develop a DROG SOP?

20           A       We -- yes, you know, we were on our way out  
21 of Iraq at the time. We ended up doing was

1 basically -- we didn't really develop an SOP. We just  
2 kind of reasserted the Army standards for the DROG  
3 process and make sure that everybody understood what  
4 those were.

5 I wouldn't say we developed our own  
6 internal SOP. We just kind of rehashed what the Army  
7 standard was for that.

8 Q In your review did you come to the  
9 conclusion that one of the biggest failure was not  
10 properly initiating a timely DROG in this case?

11 A Yes, but the DROG process wouldn't have  
12 happened until April when article 15 happened. The  
13 fact that I said that doesn't mean that it would have  
14 change anything with the loss of information but -- I  
15 guess to put the context of 15-6, I wasn't so much  
16 worried about one incident. I was looking at the  
17 brigade operations as a whole. So if we found  
18 something (INAUDIBLE) that was completely unrelated to  
19 the information loss that we had that we were to take  
20 action on it.

21 I did feel that -- I looked at as a

1 personal failure because it was something I hadn't  
2 really looked at the DROG process to make sure we were  
3 in compliance with, but I felt like this is an area  
4 that we need to tighten our systems up with.

5 I have -- that doesn't mean (INAUDIBLE)  
6 called anything, but I did believe at the time we  
7 needed to fix our systems. That was my job as a XO was  
8 to make sure our systems were in place to run the  
9 brigade. So while I looked at a system and I saw it  
10 was broken as a result of just looking at something we  
11 didn't look at it before.

12 I did feel that at the time we were into  
13 the -- all of the things we did I felt most of them  
14 were justifiable, but the one that wasn't was the fact  
15 that we hadn't taken a harder look at the DROG process.

16 Q And from your perspective as the XO were  
17 you ever briefed on any instances involving PFC Manning  
18 in 2009?

19 A I can't recall. You know, I'll tell you  
20 the earliest (INAUDIBLE) when actually taking action to  
21 remove Manning from a theater and that packet kind of

1       came forward, you know, because all of those packets  
2       anybody that's going to move that is TOC brigade  
3       command which means that I'm part of the process that  
4       I'm doing one of those checks. I'm checking, you know,  
5       and at that point, you know, there came a point. It's  
6       been a long time. We were having a discussion about  
7       what was going on with this.

8                   It makes sense, and then push forward.  
9       When that happened, I don't remember the exact time  
10      frame of that.

11               Q        What you just talked about there of a  
12      packet to remove PFC Manning from theater, when was  
13      that?

14               A        Again, I don't remember the exact time  
15      frame. You know, it would have been several months  
16      into the deployment. I just don't remember the exact  
17      timing of it.

18               Q        2010?

19               A        Likely, but, again, I can't remember the  
20      exact time frame of it. I've had to go back and look  
21      and see when it was. You know, all of the deployment

1 kind of run together. There's months in there. I just  
2 don't recall.

3 There's a lot of actions going on. That's  
4 one of the many actions going forward. I just don't  
5 remember, to be honest, with you the exact time frame  
6 of that. I think it was -- I don't think it was as  
7 earlier as December, but I just don't recall when the  
8 time frame was.

9 Q Retrieving from the witness Defense  
10 Exhibit lema lema leam for identification.

11 MR. COOMBS: No further questions.

12 THE COURT: Cross examination?

13 CAPTAIN MORROW: Yes, ma'am.

14 CROSS EXAMINATION BY CAPTAIN MORROW:

15 BY CAPTAIN MORROW:

16 Q Sir, I want to start with the statements  
17 that Mr. Coombs discussed with you, the statements that  
18 you made previously. Those are all statements made as  
19 part of the Secretary of the Army 15-6; is that right?

20 A Yes.

21 Q And initially you were interviewed by a

1 lieutenant colonel?

2           A       Right. I think it was in the January time  
3 frame. I got called. I never actually did a sworn  
4 statement. I was a telephonic interview. First one  
5 was by a lieutenant colonel working for General Caslen  
6 and later on about two later there was a phone call  
7 from General Caslen and I spoke with him.

8           MR. COOMBS: Just the statement I covered  
9 with the witness was his rebuttal statement, so not the  
10 15-6 statement, and that's defense lema lema lema.

11           THE COURT: Lema lema lema.

12           CAPTAIN MORROW: I agreed with that, but  
13 there were other statements that were pulling that were  
14 for the witness.

15           THE COURT: During the conversation.

16           Go ahead.

17           BY CAPTAIN MORROW:

18           Q       Describe your interaction with the  
19 Secretary of the Army 15-6?

20           A       Describe it. So again they called, you  
21 know, they were obviously a 15-6, and, you know, I

1 guess my -- you know, I was in there trying to give  
2 opinions about what happened, how the Army can do  
3 better in certain situations, but a lot of the  
4 questions to me were unrelated to the incident itself.

5                 They were looking at -- again, I was a  
6 little bit frustrated with the fact that we would say  
7 well this really had nothing to do with the incident,  
8 but yet they still did look into certain things. They  
9 looked at all of the operations regardless of whether  
10 or not it was directly related to the information logs  
11 or not.

12                 So if they asked me a question I answered  
13 it truthfully as I could. In secondhand information  
14 because I didn't have direct knowledge of certain  
15 things.

16                 For example, you know Master Sergeant  
17 Atkins -- obviously at that point I had been affected  
18 because I had read the file I. Saw the initial  
19 investigative file on PFC Manning. So my judgment was  
20 somewhat swayed by not firsthand knowledge, but by  
21 secondhand knowledge offering opinions based on

1 assessments made by other people.

2 Q The 15-6 had a number of documents in their  
3 possession and they were sort of asking if you had  
4 known this at this time would you have done?

5 A That's right, and they referred to some of  
6 those documents that I had already seen. I was able to  
7 see certain documents. So I was offering opinions not  
8 necessarily -- not everything I was offering was direct  
9 knowledge of the incidents. It was opinions about what  
10 happened.

11 And from what I gathered they were trying  
12 to get a sense of the systems within the brigade how we  
13 functioned. So they were kind of -- I thought they  
14 were kind of systems approach focus which being the XO  
15 I can kind of give them context how everything in the  
16 brigade operates and there were a lot of opinions that  
17 were asked to have me, and, again, a lot of things I  
18 didn't find out until after, you know, after.

19 The time frame when investigators came in  
20 we got a call from the DIA. It was, you know, they  
21 provided us with a packet of this is what we're going

1 forward on. So I was able to read quite a bit of stuff  
2 that I probably didn't have direct knowledge of before  
3 or before talking to the 15-6. Like you said, at times  
4 they would ask me questions, did you know this or did  
5 you know that and my answer might be no and here's what  
6 I think of it.

7 Q Sir --

8 THE COURT: Before you get there. You  
9 testified earlier that you did something. You had the  
10 interview in January, January when?

11 THE WITNESS: January 2011, ma'am.

12 THE COURT: Thank you.

13 BY CAPTAIN MORROW:

14 Q Both of the interviews were in January of  
15 2011; is that right?

16 A That's correct.

17 Q How many times have you deployed?

18 A I've deployed three times. I have six  
19 total of operational deployment.

20 Q Did this brigade function any differently  
21 than any other brigade that you'd ever been a part of?

1           A       Not tremendously different.  We fell within  
2 what you would consider to be the norms of brigade  
3 combat teams.

4           Q       Sir, at the stepping back for a moment, you  
5 talked about on direct you discussed removing Major  
6 Clossan from his position.  Major Clossan, in your  
7 words, was sort of a weak leader at least after the  
8 fact was instituted; but did he, in your opinion, did  
9 he create a poor command climate?

10          A       Leadership is a broad based term.  So if  
11 you go to the definition of leadership and you go to  
12 the Army doctrine publication 6-2 and look at some of  
13 those (INAUDIBLE) was he weak in all of them, no.  Some  
14 things he was very strong and some things he was weak.

15                 One of his weakest leadership skills was  
16 his communication skills.  What I saw him is he lacked  
17 confidence in communication skills, which impacted his  
18 ability to directly communicate with the brigade  
19 commander.

20                 There was -- you know, we didn't, you know,  
21 I never saw what -- I never physically saw and I don't

1 believe it existed is what I would call like a toxic  
2 leadership environment. There was never a point within  
3 his shop or within the S2 section that I felt like  
4 there was negative leadership applied which are say he  
5 was weak leadership. Most of that interaction occurred  
6 when he's dealing with the brigade commander and he's  
7 in front of a large group and honestly his  
8 communication skills and his lack of confidence, two  
9 leadership positions that we value people on were not,  
10 you know, what you would want from a person who's got  
11 has a brief continuously and talks to high level  
12 individuals to include multi-star generals coming into  
13 the brigade headquarters.

14 Q So your observations of him were  
15 necessarily related to any internal management of the  
16 shop?

17 A No.

18 Q And would the same be sort of true of  
19 Master Sergeant Atkins, what you learned about later on  
20 after the fact hindsight?

21 A Right, and, of course, his direct

1 interactions with me. You got to kind of think in  
2 context I'm a (INAUDIBLE) Army officer, it's an  
3 infantry brigade, and our expectations of appearance  
4 and styles of leaders might be different than if you're  
5 in other areas of the Army.

6 So I'm kind of referencing -- we again we  
7 have somewhat high standard. Master Sergeant Atkins  
8 has kind of a disheveled look about him and that's a  
9 little unnerving for someone like myself who's used to  
10 serving with combat (INAUDIBLE).

11 Whether it's a fair characterization, you  
12 know, that's why I say it's a little harsh for me to  
13 say though things and feel a little judgmental of him  
14 but it was my characterization at the time.

15 Q Sir, in terms of the way the information  
16 flow -- let me back up one second. Sir, have you've  
17 been a S3 before?

18 A That's correct.

19 Q As the S3 you had sort of an NCOIC in your  
20 section?

21 A It was a sergeant major (INAUDIBLE).

1           Q       When you were in S2 was it uncommon for you  
2 to delegate enlisted personnel management issues to  
3 your NCOIC or sergeant major?

4           A       It's what I would consider to be the norm  
5 because as a staff officer of like an S3 or an S2 the  
6 way I function was that the sergeant major or master  
7 sergeant, depending what I had at the time, for the  
8 most part had, you know, that was his duty restriction  
9 was to manage the noncommissioned officers.

10           And so the direct leadership supervision  
11 and those kinds of NCOIC of the shop, you know, with --  
12 you know, if there's an issue that would could up and  
13 this how I operated. He would run it by me and tell me  
14 what's going on. Of course I interacted with soldiers  
15 but I wasn't involved in direct supervision of enlisted  
16 members.

17           As a primary staff officer especially S2 S3  
18 sections you're really focused on the unit's mission  
19 and not so much of managing your own shop. That's the  
20 senior level NCOs to do that for you.

21           Q       Sir, in your capacity as staff XO and then

1 in your prior positions or assignments as an S3 or any  
2 of your assignments, have you ever observed a soldier  
3 becoming angry with their supervisor?

4 A Sure, absolutely.

5 Q And would an agitated soldier necessarily  
6 lead to the initiation of a DROG?

7 A No, not -- you're always -- you try to take  
8 the minimal approach to try to counsel them and try to  
9 rehabilitate them. If there's a pattern of events and  
10 eventually you might get to that point, but one single  
11 would not constitute not unless it was really an  
12 egregious event it would not constitute the need to do  
13 that.

14 Q Sir, would you expect that as the XO the  
15 information flow in terms of, for example, if you had a  
16 soldier in the S2 shop who was going to the S2 wanted  
17 to chapter that soldier, where would that information  
18 flow go first? Would it go straight to the XO or would  
19 it go to the HHC command?

20 A There are kind of parallel lines. First  
21 most likely probably go to the HHC commander first

1 because they're the ones that have the command  
2 responsibility.

3                   So it would come to me as a matter of  
4 professional courtesy to make sure I know what's going  
5 on in the brigade staff because it's kind of a --  
6 there's some gray lines in terms of our chain of  
7 command and how things work, but the command  
8 responsibility again relies through the company  
9 commander. That's where the responsibility lies, and I  
10 don't have authority as a commander. So there's  
11 certain things I can't do. So I would expect it to  
12 move in that route, and also at the same time they  
13 would be letting me know what's going on because I'm  
14 overall responsible for the conduct of the staff.

15                Q        Sir, would you expect as the XO would you  
16 expect anger management issues to arise to your level?

17                A        Not from a junior soldier, no. Not unless  
18 it became very significant where we're talking about,  
19 you know, a look at like a court martial type issue.  
20 General things of operations of PFCs on the brigade  
21 level on brigade staff, those would not have risen to

1 my level.

2 Q Sir, you talked about a number of actions  
3 taking with respect to information security post  
4 Manning's arrest and these were part of the AR process  
5 afterwards?

6 A Yes.

7 Q And you disabled write capabilities on  
8 computers or at least for --

9 A Certain number of computers, that's  
10 correct.

11 Q And you may or may not have developed a  
12 DROG SOP, do you recall whether that actually occurred?

13 A I don't. At the point we finished up on  
14 this we were literally shutting down our network. So  
15 some of things that we recommended to get done never  
16 quite came to fruition hammed we were literally on the  
17 way of transitioning out of Iraq. We were shutting  
18 down and we were doing a valid handover to another  
19 brigade combat team.

20 So some of the things that didn't get fully  
21 implemented, I can't recall which did or did not, but

1       they became moot points because the brigade was  
2       essentially no longer there. The brigade was in the  
3       status of having three quarters of it moving back to  
4       Iraq while a few of us were still remaining.

5           Q        Maybe this will help the Court, sir.

6       Manning was arrested in late May of 2010?

7           A        That's correct.

8           Q        When was the planning beginning to relocate  
9       the brigade?

10          A        The planning had already been completed.  
11       The execution mode began in June. In June we began --  
12       it wasn't a typical redeployments of the brigade combat  
13       teams. Typically brigade combat teams come and go as  
14       full units.

15                In this situation we were in the process of  
16       withdrawing battalions at a time. We were going a  
17       staggered approach because there were some manning  
18       limitations within the brigade that we had to get to,  
19       some caps for personnel strengths which were steadily  
20       moving troops out starting as early as June.

21           Q        Sir, in terms of physical security in a

1 SCIF, in your experience would it be feasible in a  
2 combat environment to pad a soldier down who leaves the  
3 SCIF?

4 A No, it's not. To me, you know, if you have  
5 access to a computer you're always going to have the  
6 ability because it is not feasible to check every  
7 single person leaving the SCIF or, you know, and  
8 honestly doesn't (INAUDIBLE) we use the term SCIF, but  
9 SIPR computers are everywhere, they're not just in  
10 SCIFs. They were located everywhere from the company  
11 level CP all the way up to the battalion CP?

12 Q You mean command posts?

13 A Yes. So our SIPR secure net connection the  
14 SCIFs had more compartmentalized information, but the  
15 idea of trying to check every single soldier to see if  
16 they have unauthorized stuff coming off of them to me  
17 in my opinion would be completely unfeasible in a  
18 combat environment.

19 We rely on the fact that we have to trust  
20 our subordinates to do the right things because we  
21 can't control information in that manner and that's

1 kind of what I told the 15-6 and they never, never  
2 wrote anything about it. I told them all the actions  
3 that we took probably would have very little impact on  
4 what happened in the Iraq.

5 Q Sir, I want to sort of finish by talking  
6 about the word ideally. When you use the word ideally  
7 in your letter of reprimand rebuttal, was that  
8 because -- ideally none of this would have happened.  
9 Is that essentially your point there?

10 A Yes.

11 MR. COOMBS: Argumentative and also  
12 mischaracterization of when he used that word ideally.  
13 So it's within --

14 CAPTAIN MORROW: It's in reference to Major  
15 Clossan understand.

16 THE COURT: I remember the evidence. Why  
17 did you use the term ideally?

18 THE WITNESS: Because I would have ideally  
19 like to have had a stronger team going forward into  
20 Iraq. I would have liked to have had a stronger team.  
21 Ideally from the Army you have everything we need right

1 when we need it, but that's just not the Army. In the  
2 Army we have the assets and resources that we have and  
3 we're told to accomplish our mission with the with  
4 assets and resources that we have, and that's what we  
5 do. So ideally I would have had brand new weapons,  
6 ideally I would have had all of these different things  
7 out there, but we don't get ideally want we have to  
8 manage what we have.

9            Ideally I would have had a different  
10 OICN and NCOIC in the shop. That's an accurate  
11 statement ideally I would have. It doesn't mean  
12 that they're not qualified for the positions that  
13 they were in.

14            BY CAPTAIN MORROW:

15            Q        But it was a essentially a backward  
16 located.

17            A        Absolutely. At the time, you know, at the  
18 time we knew we had some challenges within that shop.  
19 Myself and Colonel Miller and other leadership within  
20 the brigade had some very long discussions about where  
21 we should go. So this wasn't like a haphazard. We

1 don't know what we've got there.

2 We understood, you know, some of the  
3 ramifications of not having the ideal team in there  
4 (INAUDIBLE) moved forward thinking that that team was  
5 sufficient to accomplish the mission in Iraq. We  
6 thought that they were sufficient to the duties they  
7 had at the time.

8 Again, looking back after something like  
9 this happens, you know, hindsight is going to lead you  
10 to say I wish I had done this differently. I think  
11 that we were prudent in the decisions that we made. We  
12 were very judicious in how we were making those  
13 decisions.

14 We were looking at the needs of the unit  
15 based on what we had available to us, and at the time  
16 we made a decision which I think was -- you know, I  
17 think it was the right decision at the time to move  
18 forward with the individuals that we had because we  
19 didn't have anything better at the time that we could  
20 turn to. So we thought that it was the right decision.

21 It's been a long time Colonel Miller and I

1 had a lot of discussions about that and which were  
2 trying to do the right things for the unit and right  
3 things for the individuals as well.

4 Q And when the decision was made to remove  
5 Major Clossan were you part of the decision to replace  
6 him with captain Lim?

7 A Yes.

8 Q Sir, what are your impressions of captain  
9 Lim?

10 A Captain Lim, you know, there's no doubt  
11 that Captain Lim was one of the best military  
12 intelligence officers I ever served with. I knew -- I  
13 served with Captain Lim in 2006 and 2007 in Iraq and  
14 long before this process started I knew that he was  
15 going to be the guy that we put in there.

16 I had extreme comfort in him. I still do  
17 to this day regardless of what investigation says I  
18 would stand on that that decision a hundred times over.  
19 He's a fantastic officer. If I were serving someplace  
20 that's the guy I would want to work for. I have  
21 nothing but confidence and respect for him.

1           Q     Was that true at the time, sir?

2           A     Absolutely.

3           Q     Thank you, sir.

4                   REDIRECT EXAMINATION BY MR. COOMBS:

5                   BY MR. COOMBS:

6           Q     With regards to Master Sergeant Atkins and  
7 Major Clossan, was your determination of them a weak  
8 leader, was that a belief you had before the deployment  
9 or was that a belief you had after the 15-6  
10 investigation?

11          A     I did not -- you're using the term weak.  
12 You know, I did not feel they were the strongest  
13 leaders before the deployment as well. I understood  
14 that they had -- they had weaknesses within their  
15 capabilities.

16                   So, you know, again I'm kind of hesitant  
17 using the term weak leader for me is -- calling  
18 somebody a weak leader means a lot. They had  
19 weaknesses within their performance and within their  
20 capabilities that I felt were evident.

21                   I said it a bunch of times, yes, but I've

1       got weaknesses too. So a lot of us do. Yes, I felt  
2       they are some weaknesses there that were more  
3       significant than maybe some of the other staff members.

4           Q       With regards to a single event being the  
5       basis for a DROG, did I understand you correctly that  
6       you could have an egregious enough event that would be  
7       a single event that would cause a DROG?

8           A       Well, sure. I mean, yes, a single event  
9       could cause a DROG, absolutely. Something like a DUI  
10       or something like that, you know, or a drug use,  
11       something like that, that would absolutely be grounds;  
12       but like everything in the Army, it's always going to  
13       become, you know, mission dependent. You're going to  
14       look at every situation and make determinations.  
15       There's going to be some judgment that's made there.

16           Q       And even though maybe junior enlisted  
17       issues don't get up to your level of an XO level, could  
18       a serious enough event get to your level as an XO?

19           A       Sure. A serious enough event could be  
20       elevated to me. I have kind of two roles. One is a  
21       filter for information to the commander and two I have

1 the need to understand what's happening with the  
2 brigade staff because anything that impacts the brigade  
3 staff impacts the brigade. So, therefore, I have to  
4 kind of know what's going on. So absolutely, you know,  
5 a serious event would come forward and I would have  
6 been informed of that.

7 MR. COOMBS: Thank you.

8 THE COURT: I just have a couple of  
9 questions for you. I believe earlier in your testimony  
10 with respect to Master Sergeant Atkins, did you say you  
11 had daily interaction with him?

12 THE WITNESS: Ma'am, yes, I would say -- in  
13 Iraq I would probably see him on almost a daily basis,  
14 maybe not every day, but I would have probably ran  
15 across him on a pretty frequent basis there. I can't  
16 say it's every day, but fairly frequent.

17 THE COURT: Did he appear to have any  
18 memory issues?

19 THE WITNESS: I never saw anything that  
20 would make me think that there was something wrong with  
21 his intellectual capacity to remember something, no,

1 ma'am.

2 THE COURT: Just to make sure I understand  
3 the deployment cycle on your brigade. Did you begin to  
4 deploy in the 2009 and you started to redeploy in June  
5 of 2010?

6 THE WITNESS: Actually started deploying in  
7 September of 2009 with the initial add ons and torch,  
8 (INAUDIBLE) the main body moved in October and then we  
9 started redeploying you know initial folks probably as  
10 early as June and we deployed probably had everybody  
11 back on the ground roughly in September of 2010. The  
12 redeployment was about a four-month process.

13 THE COURT: Anything further based on that?

14 MR. COOMBS: No, Your Honor.

15 CAPTAIN MORROW: No, Your Honor.

16 THE COURT: All right. You are temporary  
17 excused. I'm looking at the time and the amount of  
18 witnesses we have left for today. What do you believe  
19 is the best approach?

20 MR. COOMBS: Just if we could come back by  
21 1330, Your Honor.

1                   THE COURT: Any objection to that?

2                   MAJOR FEIN: No, ma'am.

3                   THE COURT: Anything else we need to  
4 address before we recess the court?

5                   (Recessed at 12:30 p.m. for lunch)

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